

No. 11437

United States
Circuit Court of Appeals

For the Ninth Circuit.

GRIFFITHS AND SPRAGUE STEVEDORING
COMPANY, INCORPORATED, a corpora-
tion,

Appellant,

VS.

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST, a corporation,
Appellee.

Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 298

Upon Appeal from the District Court of the United States
for the Western District of Washington
Northern Division

FILED

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PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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603 Central Building,
Seattle, Washington. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the
Western District of Washington, Northern Division

Civil Action No. 895

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST, a Corporation,
Plaintiff,

vs.

GRIFFITHS AND SPRAGUE STEVEDORING
COMPANY, INCORPORATED, a Corpora-
tion,
Defendant.

COMPLAINT

Plaintiff for cause of action alleges:

I.

That plaintiff, Waterfront Employers Association of the Pacific Coast, is now and at all times herein mentioned was a non-profit corporation organized and existing under and by virtue of the laws of the State of California; that the defendant, Griffiths and Sprague Stevedoring Company, Incorporated, is now and at all times herein mentioned was a corporation organized and existing under and by virtue of the laws of the State of Washington; that the matter in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.00.

II.

That the plaintiff has now and at all times herein mentioned has had among its purposes and objects

the representation of its members in matters relating to the employment of longshoremen and other shore employees and to act on behalf of its members in the development, establishment and maintenance of safe working conditions and rules relating thereto.

III.

That the defendant has now and at all times herein mentioned has had its principal place of business in King County in [2] the State of Washington, being engaged in the performance of ship, dock and other shore work requiring the employment of longshoremen and other shore employees and is now and at all times herein mentioned was a member of the plaintiff.

IV.

That the plaintiff is now and at all times herein mentioned has been performing its purposes and objects on behalf of its members and the defendant has participated in and enjoyed the benefits thereof.

V.

That pursuant to the by-laws of the plaintiff duly adopted to regulate its affairs and to further its objects and purposes the Board of Directors of the plaintiff duly levied and assessed against the members of the plaintiff a tonnage assessment which is now and at all times herein mentioned has been in full force and effect, to-wit, 2½ cents per manifest ton (weight 2000 pounds, measurement 40 cubic feet) on all off-shore and intercoastal cargo handled by members, including such cargo handled for non-

members, payable at the end of each month. That said tonnage assessment is a reasonable compensation for the benefits which have accrued to and have been enjoyed by the defendant as a member of the plaintiff and which said tonnage assessment the defendant is obligated to pay and has agreed to pay.

VI.

That the plaintiff at all times herein mentioned has duly adopted and established a form and method of reporting cargo tonnage subject to the tonnage assessment, being a so-called "Monthly Report of Tonnage." That since the period ending March 31, 1942, the defendant has failed to report to the plaintiff in the manner and form so required by the plaintiff all of the cargo tonnage handled [3] by the defendant and subject to said tonnage assessment. That since the period ending March 31, 1942, the defendant has and continues to so report some of said cargo tonnage and pay the tonnage assessment due thereon. That the defendant has paid to the plaintiff an amount asserted by the defendant to be the tonnage assessment on all cargo tonnage not so reported for the period from March 31, 1942, to December 31, 1942, but has failed and refused to furnish to the plaintiff the required report of all said cargo tonnage for said period; that the plaintiff alleges on information and belief that the defendant has handled not less than 1,389,161 manifest tons of cargo for the period from January 1, 1943, to December 31, 1943, and that the tonnage assessment due thereon is not less than

\$34,729.02, no part of which has been paid although due demand for payment thereof has been made; that the plaintiff alleges that the defendant has handled large amounts of cargo subject to the tonnage assessment during the period January 1, 1944, to date, the amount thereof being to the plaintiff unknown and that but a fraction thereof has been reported and payment made thereon despite due demand therefor.

VII.

That the defendant should be required to account to the plaintiff for all cargo handled by the defendant since March 31, 1942, and to pay the tonnage assessment thereon, less the amounts heretofore paid thereon, together with interest on each amount thereof at 6% per annum from the date the same was due.

Wherefore, the plaintiff prays for a judgment requiring the defendant to report to and account to the plaintiff for all unreported cargo handled by the defendant subject to said tonnage assessment and that the plaintiff have judgment against the defendant in the sum of \$34,729.02, together with the additional tonnage [4] assessment due thereon with interest at 6% per annum from the several dates when the various portions thereof became due, together with the plaintiff's costs and disbursements herein to be taxed; and that the plaintiff

have such other, further or different relief as may be meet and proper.

BOGLE, BOGLE & GATES,
EDWARD G. DOBRIN,
Attorneys for Plaintiff.

[Endorsed]: Filed March 22, 1944. [5]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant and answers plaintiff's complaint as follows:

I.

Answering paragraph IV thereof, defendant denies each and every allegation therein contained.

II.

Answering paragraph V thereof, defendant denies each and every allegation therein contained.

III.

Answering paragraph VI thereof, defendant admits that it has paid an amount for the period from March 31, 1942, to December 31, 1942, but denies each and every remaining allegation contained in said paragraph.

IV.

Answering paragraph VII thereof, defendant denies each and every allegation therein contained.

Further and by way of a First Affirmative Defense, the defendant alleges:

I.

That under the constitution and by-laws of the plaintiff, Waterfront Employers Association of the Pacific Coast, the membership of said organization consists of two classes, namely, voting members and associate members.

II.

That the defendant, by virtue of being engaged only in the stevedoring business, is an associate member only and, as such, has no vote in the plaintiff corporation and is not eligible to be a voting member of the plaintiff.

III.

That under the said constitution and by-laws of the plaintiff, the Board of Directors of plaintiff has no power to levy any assessment of the character described in plaintiff's complaint upon any associate member, and that in consequence any action of said Board of Directors purporting to levy such assessment against the defendant is invalid and unenforceable.

Further and by way of a Second Affirmative Defense, the defendant alleges:

I.

That under the constitution and by-laws of the plaintiff, Waterfront Employers Association of the Pacific Coast, the Board of Directors of said corporation, in levying assessments upon the member-

ship, is required to make any such levy uniformly applicable to the entire membership of the class affected by said assessment.

II.

That there are a large number of associate members of the plaintiff corporation doing business both in the Port of Seattle and elsewhere whose membership status in the plaintiff corporation is precisely the same as that of defendant, but against whom plaintiff does not purport to levy any assessment [7] for the support of the plaintiff corporation.

III.

That there are other members of plaintiff who are either voting members or associate members against whom the plaintiff purports to levy an assessment based on the amount of tonnage handled in stevedoring operations of such members, but in the case of such members such assessment is computed and applied upon a basis more favorable than that sought to be applied in the case of said defendant in that such other members furnished stevedoring service which includes certain operations and use of longshoremen not included in the stevedoring operations of the defendant; that by reason of the different character of its operations, defendant should be in a different classification from such other members, and the attempt of plaintiff to levy an assessment against defendant upon the same basis as it levies assessments against such other members who are engaged in a different type of

stevedoring operation results in lack of uniformity in the levy of such assessments by plaintiff.

IV.

That in consequence of the lack of uniformity in plaintiff's program for levying assessments on the membership of the plaintiff corporation, as alleged in the two last preceding paragraphs hereof, the assessments sought to be enforced against the defendant in this action are invalid and unenforceable.

Further and by way of a Third Affirmative Defense, the defendant alleges:

That insofar as any action of the Board of Directors of the plaintiff purports to levy assessment upon the defendant of the character alleged in the complaint, such assessments [8] are sought to be charged with respect to shipments made for the account of, and at the expense of, the United States Government, and it is the purpose and theory of such alleged action upon the part of the said Board of Directors of the plaintiff that the defendant shall collect the amount of such assessment from the United States Government, in addition to the charge actually made for services rendered by the defendant to the Government, to the end that the Government and not the defendant would bear the burden of such assessment; that inasmuch as such action of the Board of Directors would require or seek to induce the defendant to exact from the Government of the United States an amount to be paid to the support of the plaintiff organization, in which said

Government of the United States is not a member or in any way interested, such action of the Board of Directors is contrary to public policy and void, and the purported levy of such assessments on defendant is, therefore, invalid and unenforceable.

Further and by way of a Fourth Affirmative Defense, the defendant alleges:

That any written or oral statement of defendant upon which the plaintiff purports to rely in support of the allegations of paragraph V of its complaint is not in truth and in fact an agreement to be legally liable on account of any assessment claimed by plaintiff, because it has at all times been specifically understood and agreed between the parties to this action that the defendant has at all times denied any legal liability to pay any assessment levied against it; and that all statements by or on behalf of defendant relative to the payment of any such assessment have at all times been understood by plaintiff and defendant to constitute only a [9] declaration of intention on the part of the defendant without subjecting it to any legal liability, and that even such declarations of intention have at all times been conditioned upon the understanding that the Board of Directors of the plaintiff would take some further action which would result in a fair and equitable program for the support of the plaintiff corporation, under which program all members of the same class would be called upon to contribute their just proportion of moneys necessary for the support of the plaintiff.

Further and by way of a Fifth Affirmative Defense, the defendant alleges:

I.

That it is engaged in the stevedoring business in the State of Washington, with its principal activities at the Port of Seattle, in said State; that in order to engage in said business, it requires the services of longshoremen, all of whom are members of the International Longshoremen's and Warehousemen's Union; that it would be impossible for the defendant to conduct its business with longshoremen who are not members of the Union.

II.

That plaintiff and the said Union jointly operate the hiring halls through which defendant must obtain the longshoremen necessary for its business; that if defendant were to withdraw from the plaintiff corporation, the plaintiff would attempt to exact from defendant four cents (4c) per man hour for each longshoreman hired by it, and if defendant would pay at the rate of four cents (4c) per man hour, the total amount so paid would be even greater than the amount sought to be collected from defendant as a member of the [10] plaintiff corporation by virtue of the alleged assessment mentioned in plaintiff's complaint; that if defendant should withdraw as a member of plaintiff corporation and should thereafter refuse to pay to the plaintiff an amount equal to four cents (4c) per man hour for each longshoreman employed by it, the plaintiff would, as defendant is informed and

believes, act in combination with said union so as to prevent defendant from procuring the longshoremen necessary for the conduct of defendant's business; that under these circumstances the defendant is compelled to remain a member of the plaintiff in order to protect its business, and that any apparent agreement or acquiescence on the part of the defendant in the assessments asserted against it by plaintiff is in material part the result of duress, consisting of the facts hereinbefore alleged, and, therefore, does not constitute any basis for any liability of defendant to plaintiff.

Wherefore, having fully answered, defendant prays that plaintiff's complaint be dismissed, and that it have judgment against the plaintiff for its costs and disbursements herein.

EDWARD N. HAY,

DAVID O. HAMLIN,

McMICKEN, RUPP &
SCHWEPPE,

J. GORDON GOSE,

Attorneys for Defendant.

Copy received May 10, 1944.

BOGLE, BOGLE & GATES.

[Endorsed]: Filed May 10, 1944. [11]

[Title of District Court and Cause.]

REQUEST FOR ADMISSION UNDER RULE
36 OF THE FEDERAL RULES OF CIVIL
PROCEDURE

Plaintiff, Waterfront Employers Association of the Pacific Coast, a Corporation, requests defendant, Griffiths and Sprague Stevedoring Company, Incorporated, a Corporation, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That Exhibit 1 hereto is a true copy of the Constitution and By-Laws of the plaintiff, as amended, and in effect since July, 1937.

2. That the defendant by its duly authorized officer, signed the Constitution and By-Laws of the plaintiff on or about July, 1937.

3. That Exhibit B to the plaintiff's Bill of Particulars on file herein sets forth a true copy of a resolution duly adopted by the Board of Directors of the plaintiff on July 31, 1937.

4. That Exhibit 2 hereto is a true copy of the form of "Monthly Report of Tonnage" now and at all times mentioned in the complaint herein, provided by the plaintiff for reporting the cargo tonnage subject to tonnage assessment, as fixed by the Board of Directors of the plaintiff. [12]

5. That Exhibit C to the plaintiff's Bill of Particulars on file herein sets forth a true copy of a

resolution duly adopted by the Board of Directors of the plaintiff on May 11, 1938.

6. That Exhibit 3 hereto is a true copy of a letter of May 20, 1938, from the plaintiff, which was received by the defendant on or about the date it bears.

7. That Exhibit D to the plaintiff's Bill of Particulars on file herein sets forth a true copy of a resolution duly adopted by the Board of Directors of the plaintiff on February 4, 1940.

8. That Exhibit E to the plaintiff's Bill of Particulars on file herein sets forth a true copy of a resolution duly adopted by the Board of Directors of the plaintiff on May 8, 1940.

9. That Exhibit F to the plaintiff's Bill of Particulars on file herein sets forth a true copy of a resolution adopted by the Board of Directors to the plaintiff on May 8, 1940.

10. (Omitted by request—Clerk)

11. (Omitted by request—Clerk)

12. That Exhibit 4 hereto is a true copy of a resolution duly adopted by the Board of Directors of the plaintiff on May 9, 1940.

13. That Exhibit 5 hereto is a true copy of the Memorandum Agreement signed by the defendant on or about May, 1940.

14. That Exhibit G to the plaintiff's Bill of Particulars on file herein sets forth a true copy

of a resolution duly adopted by the Board of Directors of the plaintiff on August 14, 1940. [13]

15. That Exhibit 6 hereto is a true copy of a letter of August 17, 1940 from the plaintiff, which was received by the defendant on or about the date it bears.

16. That Exhibit H to the plaintiff's Bill of Particulars on file herein sets forth a true copy of a resolution duly adopted by the Board of Directors of the plaintiff on March 12, 1941.

17. That Exhibit I to the plaintiff's Bill of Particulars on file herein sets forth a true copy of a resolution duly adopted by the Board of Directors of the plaintiff on April 16, 1942.

18. That Exhibit 7 hereto is a true copy of letter of April 27, 1942 from the plaintiff, which was received by the defendant on or about the date it bears.

19. That Exhibit J to the plaintiff's Bill of Particulars on file herein sets forth a true copy of a resolution duly adopted by the Board of Directors of the plaintiff on June 25, 1942.

20. That Exhibit 8 hereto is a true copy of a letter of July 1, 1942 from the plaintiff, which was received by the defendant on or about the date it bears.

21. That the copy of letter of October 27, 1942 to the defendant, signed by K. J. Middleton on behalf of the plaintiff and being Exhibit N (pages

1 and 2) to the plaintiff's Bill of Particulars on file herein, is a true copy of the original received by the defendant on or about the date it bears.

22. That the copy of letter of November 2, 1942 from the defendant, signed by F. E. Settersten, addressed to K. J. Middleton, Waterfront Employers of Washington, and being Exhibit O to the plaintiff's Bill of Particulars on [14] file, is a true copy of the original delivered by the defendant to the plaintiff on or about the date it bears.

23. That Exhibit K to the plaintiff's Bill of Particulars on file herein sets forth a true copy of a resolution duly adopted by the Board of Directors of the plaintiff on November 11, 1942.

24. That Exhibit L to the plaintiff's Bill of Particulars on file herein sets forth a true copy of a resolution duly adopted by the Board of Directors of the plaintiff on November 12, 1942.

25. That the copy of the Special Committee Report set forth on Exhibit L to the plaintiff's Bill of Particulars on file herein is a true copy of the Special Committee Report attached to the resolution adopted by the Board of Directors of the plaintiff on November 12, 1942, as set forth on Exhibit L to said Bill of Particulars.

26. That on and after June 18, 1934 the defendant was and still is a member of the Waterfront Employers of Washington, a corporation.

27. That Exhibit 9 hereto is a true copy of a

resolution duly adopted by the Board of Directors of the plaintiff on February 25, 1943.

28(a). That a meeting of the Board of Trustees of the Waterfront Employers of Washington was duly held on March 10, 1943 at which meeting F. E. Settersten and M. E. Hay, representing the defendant, were present, together with a committee from San Francisco consisting of W. J. Bush, Thomas James, J. A. Lunny and W. T. Sexton, representing the plaintiff and appointed pursuant to the resolution of the Board of Directors of the plaintiff set forth on Exhibit 9 hereto. [15]

28(b). That at said meeting of the Board of Trustees of the Waterfront Employers of Washington held on March 10, 1943, M. E. Hay on behalf of the defendant, as his client and principals, stated as follows:

“* * that his principals had met with the Committee from San Francisco and had ironed out with them certain matters which had been misunderstood or in dispute and that his client felt that, having accepted benefits of the Coast Association, there was a moral obligation to pay for such benefits, that the matter of legal liability was waived, and that his client would pay back assessments of 2½¢ a ton, and future assessments made by the Coast Association, the method of payment to be arrived at with the San Francisco Committee following adjournment of this meeting.”

29. That the copy of the letter of March 11, 1943 from the defendant, signed by M. E. Hay,

Secretary, addressed to the Committee, Waterfront Employers Ass'n. of the Pacific Coast, set forth on Exhibit P (page 1) to the plaintiff's Bill of Particulars on file herein, is a true copy of the original delivered by the defendant to the plaintiff on or about the date it bears.

30. That subsequent to March 11, 1943 the defendant paid to the plaintiff the amounts asserted by the defendant to be the balance due on the tonnage assessment owing to the plaintiff from the defendant for a period ending December 31, 1942.

31. That since the period ending March 31, 1942 the defendant has failed to report to the plaintiff on said form, Exhibit 2 hereto, all of the cargo tonnage handled by the defendant and claimed by the plaintiff to be subject to the tonnage assessment and has not paid the tonnage assessment alleged to be due thereon.

32(a). That on or about February 1944 and prior to the institution of this action the defendant made a tender to the plaintiff of a check in the amount of \$17,364.51, [18] which check had endorsed thereon "In full payment of 1943 tonnage assessments."

32(b). That said tender and check were not accepted by the plaintiff.

33. (Omitted by request—Clerk)

BOGLE, BOGLE & GATES
EDWARD G. DOBRIN,

Attorneys for Plaintiff.

Copy received August 11, 1944.

McMICKEN, RUPP &
SCHWEPPE,

Attorneys for Defendant.

Cause 895, Plaintiff Exhibit 26 not offered.

[Endorsed]: Filed Aug. 11, 1944. [17]

[Title of District Court and Cause.]

AMENDED STATEMENT OF DEFENDANT
WITH RESPECT TO PLAINTIFF'S RE-
QUEST FOR ADMISSIONS UNDER
RULE 36.

Comes now the defendant and makes the following amended statement with respect to the thirty-three separately numbered items set forth in the Request for Admission Under Rule 36, heretofore filed herein by plaintiff.

I.

Defendant admits the truth of the facts stated in items 1, 2, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32a and 32b.

II.

Defendant admits the truth of the facts stated in item 28a, except that defendant denies any implication contained therein that the persons named therein were the only persons present at said meeting.

III.

Defendant admits, with respect to item 28b, that

the statements therein attributed to "M. E." Hay are a paraphrase of a part of what was said at said meeting by E. M. Hay, but defendant denies any possible implication that the statement as set forth expresses the verbatim language used by E. M. Hay or that the said statement constitutes all that was said by Mr. Hay at the meeting with respect to the subject matter contained in the quoted statement. [18]

IV.

(Omitted by Request—Clerk.)

E. M. HAY

DAVID O. HAMLIN

McMICKEN, RUPP &

SCHWEPPE,

J. GORDON GOSE,

Attorneys for Defendant.

State of Washington,
County of King—ss.

F. E. Settersten, being first duly sworn, on oath deposes and says:

That he is the President of the defendant corporation; that he has read the foregoing statement, knows the contents thereof and believes the same to be true.

F. E. SETTERSTEN

Subscribed and sworn to before me this 28th day of February, 1945.

J. GORDON GOSE,

Notary Public in and for the State of Washington,
residing at Seattle.

Copy received March 6, 1945.

BOGLE, BOGLE & GATES

Cause 895, Plaintiff Exhibit 27 not offered.

Entered:

[Endorsed]: Filed March 6, 1945. [19]

[Title of District Court and Cause.]

ANSWER TO WRITTEN INTERROGA-
TORIES NUMBERS 1 TO 5 PROPOUNDED
BY PLAINTIFF.

Comes now F. E. Settersten, President of the defendant corporation, and answers interrogatories numbers 1 to 5, inclusive, of the interrogatories heretofore propounded by the plaintiff to defendant under Rule 33 of the Federal Rules of Civil Procedure, as follows:

Interrogatory No. 1: For the period of March 1, 1942 to the date of your answer or for the period next preceding the date of your answer for which information is available, furnish all of the information as called for on Exhibit 1 attached hereto, omitting the certification and following the in-

structions contained thereon, disclosing all cargo which the defendant has loaded to or discharged from vessels during said period.

A. There are furnished herewith, marked as Exhibits 1 to 18, inclusive, monthly reports of tonnage on forms provided by plaintiff, showing all cargo handled by defendant for the War Shipping Administration for the period from March 1, 1942 to January 31, 1945.

Upon examination of these Exhibits, it will be noted that as to certain calendar months no monthly report is filed. The reason is that the defendant did not handle any cargo for the War Shipping Administration during any calendar [20] months other than those specifically covered by said Exhibits 1 to 18.

The defendant has been advised by the Judge Advocate General of the United States Army that it may furnish to the plaintiff information as to the amount of cargo handled by defendant for the United States Army, but that such information should be given only upon a calendar year basis and without indicating the particular amount carried by any ship. A copy of the letter from the Judge Advocate General on this subject is hereto attached, marked Exhibit "A." In accordance with the permission there contained, the defendant states that from March 1, 1942 to December 31, 1944, it has provided stevedoring service to vessels carrying cargo for the United States Army and that the

volume of the cargo so handled by the defendant is as follows:

From March 1, 1942 to December 31, 1942—
714,817 tons;

From January 1, 1943 to December 31, 1943—
1,389,161 tons;

From January 1, 1944 to December 31, 1944—
1,589,681 tons.

No other cargo than that hereinbefore mentioned has been handled by the defendant during the periods above mentioned.

Interrogatory No. 2: In connection with your answer to Interrogatory No. 1, state or indicate in the information supplied respect thereto the cargo tonnage listed therein which you have heretofore reported to the plaintiff, the date of such report, the amount of tonnage assessment paid on each report and the date of such payment.

A. All of the cargo handled by the defendant for the account of the War Shipping Administration, as stated in the answer to Interrogatory No. 1, has been heretofore reported to the plaintiff, and the so-called tonnage assessment of $2\frac{1}{2}c$ per ton has been paid thereon by the defendant to the plaintiff. There is attached hereto, marked Exhibit [21] "B," a schedule showing the dates of all such reports and the dates and amounts of all payments made thereon.

Defendant has also reported to and paid the plaintiff the so-called tonnage assessment of $2\frac{1}{2}c$

per ton on all cargo handled by it for the United States up to December 31, 1942, as shown in the answer to Interrogatory No. 1 above. There is hereto attached, marked Exhibit "C," a schedule showing the dates of payment and the amounts paid at 21½¢ per ton on account of such Army cargo for said period from March 1, 1942 to December 31, 1942.

Defendant further reported to the plaintiff, in writing, on or about January 25, 1944, all tonnage handled by it for the United States Army for the calendar year 1943 in the amount of 1,389,161 tons, being the same amount shown in the answer to Interrogatory No. 1 above. This report was accompanied by a tender of the sum of \$17,364.51, as a full voluntary payment of the so-called tonnage tax for the calendar year 1943.

Defendant has at no time prior hereto reported the amount of any tonnage handled by it for the United States Army after December 31, 1943, nor has any amount been paid on any such tonnage handled after December 31, 1943.

Interrogatory No. 3: In connection with your answer to Interrogatory No. 1, state or indicate in the information supplied in respect thereto which of the vessels were loaded or discharged for or on account of the United States of America and indicate for which agency thereof, as for example, the War Department, the Department of the Navy, the War Shipping Administration or other agency or subordinate agency.

A. See answer to Interrogatory No. 1.

Interrogatory No. 4: If in connection with your answer to Interrogatory No. 3 you state or indicate that certain [22] of the vessels were loaded or discharged for or on account of the United States of America, state whether such work was done under a written contract or contracts.

A. All work performed in connection with the cargo mentioned in the answer to Interrogatory No. 1 was performed under written contracts with the War Shipping Administration and the United States Army, respectively.

Interrogatory No. 5: If in connection with your answer to Interrogatory No. 4 you state that such work was done under a written contract or contracts, furnish a copy of said contract or contracts and if there are more than one contract, state as to each vessel under which contract the work was being performed.

A. Defendant supplies herewith copies of the following contracts with the United States Army:

1. Contract No. W 2031-qm-577, O. I. No. 77, dated August 22, 1942, marked Exhibit 19.

2. Contract No. W 2031-te-1190, O. I. No. 690, dated July 1, 1943, marked Exhibit 20.

3. Contract No. W45-045 te-274, O. I. No. 274-44, dated June 30, 1944, marked Exhibit 21.

By agreement with counsel, there has been elim-

inated from each of the three contract unit prices charged by the defendant for its services.

F. E. SETTERSTEN
E. M. HAY,
DAVID O. HAMLIN,
McMICKEN, RUPP &
SCHWEPPE,
J. GORDON GOSE,
Attorneys for Defendant.

(Clerk's note: Exhibits omitted herefrom on request of Appellee.) [23]

State of Washington,
County of King—ss.

F. E. Settersten, being first duly sworn, on oath deposes and says:

That he is the President of the defendant corporation; that he has read the foregoing Answer, knows the contents thereof and believes the same to be true.

F. E. SETTERSTEN

Subscribed and sworn to before me this 8th day of March, 1945.

J. GORDON GOSE,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed March 22, 1945. [24]

[Title of District Court and Cause.]

ANSWER TO WRITTEN INTERROGATORIES
NUMBERS 6 TO 15 PROPOUNDED BY
PLAINTIFF.

Comes now F. E. Settersten, President of the defendant corporation, and answers interrogatories numbers 6 to 15, inclusive, of the interrogatories heretofore propounded by the plaintiff to defendant under Rule 33 of the Federal Rules of Civil Procedure, as follows:

Interrogatory No. 6: Did the plaintiff prior to the institution of this action perform any of its purposes and objects as set forth in paragraph II of the complaint in which you participated or of which you enjoyed the benefits? A. Yes.

Interrogatory No. 7: Has the plaintiff since the institution of this action performed any of its purposes and objects as set forth in paragraph II of the complaint in which you have or now are participating or enjoying the benefits? A. Yes.

Interrogatory No. 8: If your answer to interrogatory No. 6 is in the affirmative, state the nature and extent of the performance of such purpose and objects, together with the nature and extent of your participation therein and enjoyment of the benefits thereof and for what period of time.

A. The plaintiff prior to the institution of this [25] action negotiated contracts with the Labor Union, of which the defendant's longshoremen employees were members, and the defendant at all

times while such contracts were in force hired its said employees in accordance with such contracts.

Interrogatory No. 9: If your answer to interrogatory No. 7 is in the affirmative, state the nature and extent of the performance of such purposes and objects, together with the nature and extent of your participation therein and enjoyment of the benefits thereof and for what period of time.

A. Since the institution of this action, the plaintiff has continued to negotiate labor contracts on behalf of its membership, and defendant has continued to employ longshoremen in accordance with the terms of such contracts.

Interrogatory No. 10: (Omitted by request—Clerk).

Interrogatory No. 11: (Omitted by request—Clerk).

Interrogatory No. 12(a): What office or offices has F. E. Settersten held in the defendant and what position or positions has he held with the defendant for the years 1942, 1943, and 1944, giving the period by dates of each?

A. President and Director during entire period.

Interrogatory No. 12(b): What office or offices has M. E. Hay held in the defendant and what position or positions has he held with the defendant for the years 1942, 1943 and 1944, giving the period by dates of each?

A. E. M. Hay, not M. E. Hay, held the positions

of Secretary-Treasurer and Director during all of these three years.

Interrogatory No. 12(c): What office or offices has M. J. Weber held in the defendant and what position or positions has he held with the defendant for the years 1942, 1943, and 1944, giving the period by dates of each? [26]

A. Vice-President during entire period.

Interrogatory No. 12(d): (Omitted by request—Clerk).

Interrogatory No. 13: (Omitted by request—Clerk).

Interrogatory No. 14: (Omitted by request—Clerk).

Interrogatory No. 15: At what rate of tonnage assessment was the sum of \$17,364.51 tendered to the plaintiff prior to the institution of this action calculated?

A. One and one-fourth cents ($1\frac{1}{4}$ c) per ton.

F. E. SETTERSTEN

E. M. HAY

DAVID O. HAMLIN

McMICKEN, RUPP &
SCHWEPPE

J. GORDON GOSE

Attorneys for Defendant.

State of Washington

County of King—ss.

F. E. Settersten, being first duly sworn, on oath deposes and says:

That he is the President of the defendant corporation, that he has read the foregoing answer, knows the contents thereof and believes the same to be true.

F. E. SETTERSTEN

Subscribed and sworn to before me this 27th day of December, 1944.

[Seal] J. GORDON GOSE

Notary Public in and for the State of Washington,
residing at Seattle.

Copy received Dec. 28, 1944.

BOGLE, BOGLE & GATES

[Endorsed]: Filed Dec. 29, 1944. [27]

[Title of District Court and Cause.]

COURT'S ORAL DECISION

December 15 1945

Black, J.

The Court: Gentlemen, before I take up what I have to say in connection with the two cases, I will make a rather general statement which you counsel are entitled to receive. I have asked counsel

in the case ordinarily known as the Waterfront Employers case, and counsel in the case generally called Hathaway vs. Boeing to be present so that I might make certain announcements. I, at least, was quite careful to ask that the notice that went to you be not more definite than that.

In connection with the Waterfront Employers case particularly counsel and those whom counsel represent are entitled to some explanation. The case was submitted to me about the 10th of July. Something more than five months has elapsed since that period. Counsel will never be able to explain to their clients what it has taken the Judge so long. I may say that beginning with the first of July I have had more responsibility than my time or strength was able to cope with. With the exception of this one case, I nevertheless think that all of my decisions have been kept reasonably punctual. There has been no delay as to any matter in Eastern [27-A] Washington, and I have had many problems. With one exception, there has been no substantial delay in decisions in Western Washington aside from the Waterfront Employers case. I think that there is good reason for the delay in connection with such other matter which I am not mentioning this morning.

The Waterfront Employers case was very complex in the problems and issues presented and in the presentation. More than that, it was interrupted necessarily in the reception of evidence. In attempting to keep up with my schedule some matters were sure to get more than their share of apparent

delay, and the most the attorneys can advise their client in that case is that unfortunately their case was the one that was crowded by my attempt to take care of the business that Judge Schwellenbach's resignation produced for some judge. Under the law making me a roving judge, that was my task.

I am not going to be able to give a decision in either of the cases concerning which I have asked counsel to appear this morning. I am going to make an announcement in each. In each case I am going to announce what my decision is, that is, my decision as to who wins and in the case where necessary how much. I am not going to attempt in either case to give a decision that would be appropriate for print. I will not in either case give a decision which would be very satisfactory to the attorneys or litigants as to an analysis of their arguments presented. There comes a time, however, that the parties would like to know the result regardless of the reasons. Certainly, in the Waterfront case that time has come. Therefore, I am going to take it up first.

In Cause No. 895, entitled Waterfront Employers Association of the Pacific Coast, a corporation, plaintiff, versus Griffiths & Sprague Stevedoring Company, Inc., a corporation, [27-B] defendant, the plaintiff seeks to recover a very substantial amount from the defendant for what have been sometimes referred to as tonnage assessments for 1943 and 1944, as I remember it, and allegedly owed by defendant to plaintiff as a member of plaintiff's association.

Counsel presented their respective contentions very ably. In addition to such oral assistance as the Court received, very excellent briefs were submitted. I considered all of the contentions and all of the evidence and exhibits and various citations. Upon consideration of all of such I came to the conclusion some considerable time ago as to which party was entitled to win unless there was some further reason in favor of the other side which had not been presented either by argument or express pleading, and, therefore, I investigated that avenue.

After considering every phase of the matter and the evidence as presented, I am satisfied that the plaintiff is entitled to recover. That will be the judgment.

I am not going to endeavor now to analyze the evidence, the arguments or the citations. It may be advisable in the next week or two in connection with such findings as may be presented that I be more explicit in my conclusions and views. On the other hand, I am sure that it would be better for the parties to know today what the result will be rather than wait for the result with more admirable discussion.

In brief I may say that a most persuasive consideration was that the defendant had paid a portion of these dues or assessments and that the defendant by language strongly indicated its intention to pay the balance. In addition, I may say that it was most persuasive to me that the defendant obtained benefits which if the Association had not existed, the defendant would have under the evi-

dence expended a substantial [27C] amount necessarily to get.

I am very mindful of the position of the defendant that its payment of these dues is against public policy by virtue of services rendered the government. I am very mindful of the cases which the defendant cited. I don't know that I disagree at all with the decision in those cases upon the facts which were there present. The language that the Court used in one or more of those decisions was more general than the Court needed to use. The facts in the cases relied upon by the defendant most properly, in my opinion, justified the result, but did not justify conclusive language. The Illinois decision, I think, was correct as to the facts therein involved. That decision, of course, supported the plaintiff. The distinction which may be roughly given is this, that in this instant case the Association was furnishing benefits which the defendant needed and which were advantageous to the government and which, if the Association did not exist, the defendant would have expended money for to obtain otherwise and the government would have wished the defendant to expend such money for such benefits.

That is a far cry from the Kentucky situation, if I remember the jurisdiction correctly, where the dues were for something that in no wise benefited the public agency which was letting the contract.

There was one avenue which I explored which at most was hinted at in the trial of this case. It may be that if that avenue had been developed by evi-

dence, the result would be somewhat different. But under the evidence as it was developed, that avenue did not lead to any destination hurtful to plaintiff, and, therefore, both parties are entitled to know that my judgment is for plaintiff in the amount [27-D] prayed for.

There was no dispute, as I remember it, in the amount. The question was merely whether the plaintiff was to get what it asked or nothing.

I expect to be available after the 21st of this month until the 31st with a possible emergency trip to Spokane and Walla Walla, and as counsel need my views on particular matters for findings, I will be available. All I can say in justification of this unsatisfactory decision from the standpoint of an analysis of evidence or authority is that I think the time has come when you gentlemen should have the result, and that result, of course, is agreeable to one side and not to the other. Thank you, gentlemen.

(N.B. With reference to the Waterfront Employers case, same technically probably was submitted on September 24, 1945, being the date of receipt of letter from counsel enclosing copy of late court decision cited, although submitted in the main on July 10, 1945.)

[Endorsed]: Filed Dec. 18, 1945. [27-E]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having heretofore been tried before the undersigned Judge of the above-entitled Court without a jury, plaintiff being represented by its attorney, Bogle, Bogle & Gates, Edward G. Dobrin and Stanley B. Long, and the defendant represented by its attorneys, E. M. Hay, David O. Hamlin, McMicken, Rupp & Schweppe and J. Gordon Gose, and the Court having taken its decision under advisement and having thereafter given its oral opinion in favor of plaintiff and being well advised in the premises, hereby from the pleadings, including the bills of particulars, and the evidence presented, including the answers to interrogatories and statements with respect to request for admissions prior to the trial and introduced in evidence at the trial, and stipulations between the parties, makes the following

FINDINGS OF FACT

1. The plaintiff, Waterfront Employers Association of the Pacific Coast, is now and since June, 1937 has been a non-profit corporation organized and existing under and by virtue of the laws of the State of California.

2. The defendant, Griffiths and Sprague Stevedoring Company, Incorporated, is now and at all times herein mentioned with a corporation organized and existing under and by virtue of the laws of the State of Washington and having its prin-

incipal place of business in the City of Seattle, County of King, in [28] said State.

3. Diversity of citizenship exists between the plaintiff and the defendant and the matter in controversy exceeds, exclusive of interests and costs, the sum of \$3,000.00.

4. Those eligible for membership in plaintiff are persons, individual or corporate, regularly engaged in carrying cargo by water to or from any United States Pacific Coast port (except Alaska) or any designated agent of any such, all thereof being voting members, of whom there are 84; and persons, individual or corporate, employing longshoremen or other shore employees in any such Pacific Coast port, including stevedores and terminal operators, and any association or corporation composed of such employers, all thereof being associate members, of whom there are 47.

5. The defendant since prior to the organization of plaintiff has been engaged as a stevedore in the performance of ship, dock and other shore work at the port of Seattle and other ports in the State of Washington, employing longshoremen and other shore employees for that purpose, and since July, 1937 has been and is now an associate member of the plaintiff, and defendant has at all times since becoming a member of plaintiff hired its longshore and other shore employees in accordance with and under labor agreements negotiated and administered by the plaintiff.

6. The purposes and objects of the plaintiff are

set forth in its Articles of Incorporation and By-Laws. The defendant at all times since becoming a member of plaintiff has participated in and enjoyed the benefits thereof.

7. Pursuant to the By-Laws of the plaintiff its Board of Directors duly levied and assessed against the member of the plaintiff a tonnage assessment which is now and at all times since before 1940 has been in full force and effect, [29] to-wit: 21½ cents per manifest ton, on all off-shore and inter-coastal cargo handled by members loaded upon or discharged from vessels, including such cargo handled for non-members, payable at the end of each month.

8. Commencing with the war emergency, in addition to many other activities, the plaintiff supplied much statistical data and assistance to the Pacific Coast Maritime Industry Board, the War Shipping Administration, the Army and the Navy in connection with labor matters, including accident prevention, and the government agencies and departments above-mentioned have made extensive use thereof.

9. Members of plaintiff engaged in stevedoring (loading cargo upon and discharging cargo from vessels) signed an agreement dated May 9, 1940 whereby they agreed to collect the tonnage assessment from non-members for whom they so loaded or discharged cargo. The defendant signed said agreement on or about May, 1940.

10. From the organization of plaintiff its mem-

bers have loaded cargo upon or discharged from vessels for various agencies of the government, including the Army and the Navy and the member so loading or discharging this cargo has reported the tonnage and paid the tonnage assessment thereon. In 1940 defendant commenced to load and discharge cargo for the Army and reported the tonnage and paid the tonnage assessment thereon without questioning its obligation so to do. As the preparations for war increased and on the advent of the war the cargoes loaded and discharged for the government increased until substantially all cargoes were being transported by agencies of the government, including in addition to the Army and the Navy, the War Shipping Administration, which latter agency took over substantially all private shipping operations. [30]

11. The defendant continued to report the cargo so loaded upon or discharged from vessels by it for the Army and for other government agencies and paid the tonnage assessment thereon except that after March, 1942 it discontinued reporting the tonnage so loaded or discharged by it for the Army and discontinued paying tonnage assessments thereon after October, 1941.

12. On March 11, 1943 the plaintiff accepted from the defendant a letter signed on its behalf by its secretary-treasurer, director and attorney, reading as follows:

"This is to advise you that on the tonnage handled by us for the U. S. Army up until January

31, 1943, upon which no tonnage assessment has been paid, we will pay the Waterfront Employers Association of the Pacific Coast the tonnage assessment of 2½¢ per ton on a volume tonnage to be determined; payment to be made in approximately equal installments of thirty, sixty and ninety days from this date.

“Also from February 1, 1943 onward, we will pay the tonnage assessments currently at the rate set by the Coast Association.”

13. Following the delivery of said letter on March 11, 1943 defendant paid to plaintiff in installments the tonnage assessments due for the period ending December 31, 1942 on cargo so loaded or discharged by it for the Army, the last payment being made on November 23, 1943.

14. The defendant has at all times recognized and never questioned its obligation to report the tonnage of cargo loaded upon or discharged from vessels by it for the United States acting through the agency of the War Shipping Administration and has paid the tonnage assessments thereon to plaintiff, the last payment thereon being first made after the commencement of this action.

15. In order for the defendant to have handled the loading of cargo upon and discharging from vessels for the Army it needed the services performed by plaintiff and if it [31] had not secured such services from plaintiff the defendant would have needed to have furnished them itself at a

much greater cost to defendant than the assessments levied and charged by plaintiff.

16. The government agencies, the War Shipping Administration, the Army and the Navy have recognized the tonnage assessment to be a legitimate business expense of the member paying for the same and have allowed the tonnage assessment as a part of the overhead expense.

17. The said tonnage assessment is a uniform assessment falling equally and alike on all members of the plaintiff, both voting and associate, who load or discharge cargo upon or from vessels on the Pacific Coast and is a just and equitable amount to be paid by the members of the plaintiff to provide for the general support of the plaintiff and is commensurate with the value of the services performed by the plaintiff which its members, including the defendant, have enjoyed and needed.

18. The assessments at the rate of $2\frac{1}{2}$ cents per ton are assessed or levied with respect only to cargo loaded upon or discharged from any vessel. Neither a steamship company voting member nor a stevedoring company associate member nor a terminal company associate member is subject to any assessment with respect to cargo operations by any of them on the docks or in the warehouses as distinct from loading cargo upon or discharging such from vessels, as aforesaid.

19. All members of the plaintiff and of the Port Associations which are members of plaintiff, have paid all the tonnage assessments on all cargo

loaded on or discharged from vessels by them, including cargo loaded or discharged for government agencies, including the Army, with the exception of defendant and two much smaller delinquents in smaller out ports. [32]

20. The defendant has loaded or discharged cargo on or from ships for the Army for which it has not paid the tonnage assessment as follows: 1,289,161 tons in the year 1943; 1,589,681 tons in the year 1944. The tonnage assessment thereon at 2½ cents per ton is as follows: \$34,729.02 for the year 1943; \$39,742.02 for the year 1944, or a total sum of \$74,471.04.

From the foregoing Finds of Fact, the Court makes the following

CONCLUSIONS OF LAW

1. The defendant is indebted to the plaintiff in the sum of \$74,471.04 for tonnage assessments for the years 1943 and 1944.

2. Plaintiff is entitled to a judgment against the defendant in the sum of \$74,471.04 with interest at the rate of 6% per annum on \$34,729.02 of said amount from December 31, 1943 and on \$39,742.02 of said amount from December 31, 1944, together with plaintiff's costs and disbursements herein to be taxed.

3. As orally stipulated by the parties at the trial hereof said judgment is without prejudice to the claims of plaintiff for tonnage assessments due

from defendant subsequent to the year 1944, and said judgment shall so state.

Done in Open Court this 10th day of June, 1946.

LLOYD L. BLACK,
U. S. District Judge.

Copy received June 5, 1946.

EDWARD G. DOBRIN,
For Plaintiff.

J. GORDON GOSE,
DAVID O. HAMLIN,
For Defendant.

[Endorsed]: Filed June 10, 1946. [33]

In the District Court of the United States for the
Western District of Washington, Northern Division

Civil Action No. 895

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST,

Plaintiff,

vs.

GRIFFITHS AND SPRAGUE STEVEDORING
COMPANY, INCORPORATED, a corpora-
tion,

Defendant.

JUDGMENT

This cause having heretofore been tried before the undersigned Judge of the above entitled court upon the facts without a jury, the plaintiff being

represented by its attorneys, Bogle, Bogle & Gates, Edward G. Dobrin and Stanley B. Long, and the defendant being represented by its attorneys, E. M. Hay, David O. Hamlin, McMicken, Rupp & Schweppe and J. Gordon Gose, and the court having found the facts sufficient and having made and entered its Findings of Fact and Conclusions of Law directing the entry of judgment in favor of the plaintiff against the defendant, now, therefore, it is

Ordered, Adjudged and Decreed that the plaintiff have and recover of and from the defendant the sum of \$74,471.04 with interest at the rate of 6% per annum on \$34,729.02 of said amount from December 31, 1943 and on \$39,742.02 of said amount from December 31, 1944, together with plaintiff's costs and disbursements herein taxed at \$237.07. It is further

Ordered, Adjudged and Decreed that the total of this judgment, principal, interest and costs and disbursements, shall bear interest at 6% per annum from the date of entry of this judgment until paid, and that the plaintiff have execution therefor. [34]

It is further Ordered, Adjudged and Decreed that this judgment shall not be a bar to any action by the plaintiff against the defendant for similar claims accruing subsequent to the year 1944, as this judgment by stipulation of the parties applies only to the claims involved for the years 1943 and 1944 and is without prejudice to the rights of the plaintiff to recover from the defendant for tonnage

assessments due from the defendant subsequent to the year 1944.

Done in open court this 10th day of June, 1946.

/s/ LLOYD L. BLACK,

U. S. District Judge.

Presented by:

/s/ EDWARD G. DOBRIN,

Of Attorneys for Plaintiff.

Copy received March 20, 1946.

McMICKEN, RUPP &

SCHWEPPE,

Attorneys for Defendant.

[Endorsed]: Lodged March 20, 1946.

[Endorsed]: Filed June 10, 1946. [35]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT
COURT OF APPEALS

Notice Is Hereby Given that Griffiths and Sprague Stevedoring Company, Incorporated, a corporation, defendant above named, hereby appeals to the Circuit Court of Appeals for the 9th Circuit,

from the final judgment entered in this action on June 10, 1946.

McMICKEN, RUPP &
SCHWEPPE,
J. GORDON GOSE,
EDWARD M. HAY,
DAVID O. HAMLIN,

Attorneys for Appellant, Griffiths and Sprague
Stevedoring Company, Incorporated, a corpo-
ration.

[Endorsed]: Filed July 13, 1946. [36]

[Title of District Court and Cause.]

ORDER APPROVING
SUPERSEDEAS BOND

Defendant having moved for an order approving its supersedeas bond on file herein in the sum of \$89,118.90, both parties appearing by counsel of record, the Court having heard argument and being full advised,

It Is Ordered that the supersedeas bond herein filed by the defendant, Griffiths and Sprague Stevedoring Company, Incorporated, a corporation, secured by a deposit of cash in said amount with Clerk of the above-entitled Court be and the same is hereby approved.

Done in open court this 19th day of July, 1946.

LLOYD L. BLACK,

U. S. District Judge.

Presented by:

DAVID O. HAMLIN,
Of Counsel for Defendant.

Approved as to form:

EDWARD G. DOBRIN,
Of Counsel for Plaintiff.

[Endorsed]: Filed July 19, 1946. [37]

[Title of District Court and Cause.]

SUPERSEDEAS BOND

Know All Men by These Presents That Griffiths and Sprague Stevedoring Company, Incorporated, a corporation, as principal, is held and firmly bound unto Waterfront Employers Association of the Pacific Coast, a corporation, in the full and just sum of Eighty-nine Thousand One Hundred Eighteen and Ninety Hundredths (\$89,118.90) Dollars, to be paid to the said Waterfront Employers Association of the Pacific Coast, a corporation, its successors and assigns; to which payment, well and truly to be made, the undersigned binds itself, its successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 13th day of July, 1946.

Whereas, on June 10, 1946, in an action depending in the United States District Court for the Western District of Washington, Northern Division, between Waterfront Employers Association of the Pacific Coast, a corporation, as plaintiff, and

Griffiths and Sprague Stevedoring Company, Incorporated, a corporation, as defendants, a judgment was rendered against the said Griffiths and Sprague Stevedoring Company, Incorporated, a corporation, defendant above named, [38] and the said defendant having filed a notice of appeal from such judgment to the United States Circuit Court of Appeals for the Ninth Circuit;

Now, the condition of this obligation is such, that if the said Griffiths and Sprague Stevedoring Company, Incorporated, a corporation, defendant above named, shall prosecute its appeal to effect and shall satisfy the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, or shall satisfy in full such modification of the judgment and such costs, interest and damages as the said Circuit Court of Appeals may adjudge and award, then this obligation to be void; otherwise to remain in full force and effect.

In accordance with the stipulation of the parties and the order of court herein entered July 13, 1946, there is deposited herewith cash in the sum of \$89,118.90 in lieu of a surety.

GRIFFITHS AND SPRAGUE
STEVEDORING COMPANY, IN-
CORPORATED,

[Seal] By F. E. SETTERSTEN,
President.
V. C. SETTERSTEN,
Treasurer.

United States of America,
Western District of Washington,
Northern Division.

On this 13th day of July, 1946, before me personally appeared F. E. Settersten and V. C. Settersten, [39] to me known to be the President and Treasurer, respectively, of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed thereto is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal] DAVID O. HAMLIN,

Notary Public in and for the State of Washington,
residing at Seattle.

The foregoing supersedeas bond is hereby approved in open court this day of July, 1946.

District Judge.

Copy received July 13, 1946.

BOGLE, BOGLE & GATES

[Endorsed]: Filed July 13, 1946. [40]

PLAINTIFF'S EXHIBIT 1.

Admitted March 22, 1945

Amended Articles of Incorporation and By-Laws of
Waterfront Employers Association
of the Pacific Coast
Incorporated June 22, 1937

July 25, 1937. [41]

Amended Articles of Incorporation of Waterfront
Employers Association of the Pacific Coast

Know All Men by These Presents:

That a nonprofit corporation is hereby formed under and by virtue of the laws of the State of California, and the persons whose names are hereunto subscribed who are to act in the capacity of first directors of said corporation do hereby certify as follows:

ARTICLE I.

Name.

The name of this corporation shall be Waterfront Employers Association of the Pacific Coast.

ARTICLE II.

Objects.

The said corporation is one which does not contemplate pecuniary gain or profit for its members and is formed for the following purposes and objects:

Plaintiff's Exhibit 1—(Continued)

1. To encourage the establishment and maintenance of fair and reasonable wages and working conditions for longshore work and other work ashore relating to steamship service and, by the establishment and maintenance of harmonious and peaceful industrial relations between employer and employee, to promote dependable and efficient steamship service in the public interest; [42]

2. To fix, establish and maintain on behalf of its members policies in all matters relating to longshore work and other employments ashore at Pacific Coast ports of the United States (except Alaska ports);

3. To represent its members and others in matters relating to the employment of longshoremen and other shore employees at said ports, including the negotiation, execution and performance of contracts with other employers or groups thereof and contracts with groups or associations of longshoremen and other shore employees governing wages, hours and conditions of such employment;

4. To assist, represent and act in behalf of the members and others in connection with any violation of agreements relating to longshore or other employments ashore at said ports, to the end that all such agreements shall be faithfully performed by all parties thereto;

5. To collect, compile and distribute informa-

Plaintiff's Exhibit 1—(Continued)

tion and statistics relating to any of the matters herein;

6. To act on behalf of its members in the development, establishment and maintenance of safe working conditions and rules relating thereto;

7. To purchase, receive, own, manage and control, hold, sell, exchange, mortgage, pledge, hypothecate, convey, lease or otherwise dispose of real and personal property of all kinds and any and every interest [43] therein in connection with the performance of any of the objects or purposes hereinbefore specified, or which may appear conducive thereto;

8. To establish, maintain and operate such offices in the State of California and elsewhere in the United States as may be necessary or appropriate to carry out any of the foregoing objects or purposes;

9. The said corporation shall, in addition to the foregoing objects and purposes, possess the following powers:

(a) To sue and be sued;

(b) To contract and to be contracted with;

(c) To receive property by devise or bequest, subject to the laws regulating the transfer of property by will, and to otherwise acquire and hold all property, real or personal, including shares of stock, bonds and securities of other corporations;

Plaintiff's Exhibit 1—(Continued)

(d) To act as trustee under any trust incidental to the principal objects of the corporation, and to receive, hold, administer, and expend funds and property subject to such trust;

(e) To borrow money, contract debts, and issue bonds, notes and debentures, and secure the same;

(f) To do all other acts necessary or expedient for the administration of the affairs of the corporation and/or the attainment of [44] any of the objects or purposes hereinbefore specified.

10. To act for the foregoing purposes on behalf of all members, either directly or through such agents or instrumentalities as this corporation shall select.

11. No member of this corporation shall be subjected to any personal obligation or liability by any action taken by this corporation unless such action is authorized by these articles of incorporation and is taken in compliance with the provisions of the by-laws of the corporation.

ARTICLE III.

Principal Office.

The county in this State where the principal office of the corporation for the transaction of business is to be located in the City and County of San Francisco.

Plaintiff's Exhibit 1—(Continued)

ARTICLE IV.

Directors.

This corporation shall be governed by a Board of seventeen (17) Directors, and the names and addresses of the seventeen persons who are to act in the capacity of Directors until the election of their successors are as follows:

| Names | Addresses |
|-----------------------|---------------------------|
| F. J. McGowan | San Pedro, California |
| T. B. Wilson | Seattle, Washington |
| K. J. Middleton | Seattle, Washington |
| A. R. Lintner | Portland, Oregon |
| Almon E. Roth | San Francisco, California |
| R. W. Myers | San Francisco, California |
| F. A. Baily | San Francisco, California |
| J. E. Cushing | San Francisco, California |
| F. L. Doekler | San Francisco, California |
| E. H. Harms | San Francisco, California |
| J. G. Euson | San Francisco, California |
| G. Salt | San Francisco, California |
| E. Wright | San Francisco, California |
| R. V. Winquist | San Francisco, California |
| Jas. P. Cribbin | San Francisco, California |
| E. L. Barges | San Francisco, California |
| Lloyd Swayne | San Francisco, California |

The number of Directors of this corporation may be changed at any time by an amendment to the By-Laws.

Plaintiff's Exhibit 1—(Continued)

ARTICLE V.

Membership.

The classes of membership in this corporation shall be voting members and associate members, and the qualifications for the respective classes of membership in this corporation shall be the following:

Voting Member.

1. Any firm, person, association or corporation regularly engaged in the business of carrying cargo by water to or from any port on the Pacific Coast of the United States (except Alaska ports) or any agent designated by such firm, person, association or corporation shall be eligible for membership as a voting member;

Associate Member.

2. Any firm, person, association or corporation employing longshoremen or other shore employees in any port on the Pacific Coast of the United States (except Alaska port) and any association or corporation [46] composed of employers of such longshoremen or other shore employees or formed to deal with matters relating to such employments shall be eligible for membership as an associate member.

ARTICLE VI.

Voting Power.

The voting power of the members shall be re-

Plaintiff's Exhibit 1—(Continued)

stricted to the voting members. Associate members shall have no voting power whatever. The voting power of the voting members shall be set forth in the By-Laws of the corporation.

In Witness Whereof, the undersigned seventeen persons who are to act in the capacity of Directors of the corporation until the election of their successors have hereunto subscribed their names on this 17th day of June, 1937.

F. J. McGowan

T. B. Wilson

K. J. Middleton

A. R. Lintner

Almon E. Roth

R. W. Myers

F. A. Bailey

J. E. Cushing

F. L. Doeklker

E. H. Harms

J. G. Euson

G. Salt

E. Wright

R. V. Winquist

Jas. P. Cribbin

E. L. Bargones

Lloyd Swayne

By-Laws of
Waterfront Employers Association
of the Pacific Coast

Purposes.

This corporation having been formed for the purposes, among others, of promoting, establishing and maintaining peaceful and harmonious relations between employers and employees engaged or interested in longshore and other employments ashore; of encouraging the establishment of wages,

Plaintiff's Exhibit 1—(Continued)

hours and working conditions fair and just both to employer and employee, and of procuring the honest and faithful observance of all agreements and obligations by all parties concerned, the following by-laws are adopted to regulate the affairs of the corporation and further its said objects and purposes:

ARTICLE I.

Corporate Powers.

The corporate powers, business and property of the corporation shall be vested in and exercised, conducted and controlled by a board of seventeen (17) directors, who need not be members of the corporation. Not less than two of such directors shall be residents of the State of Washington; not less than one, a resident of the State of Oregon, and not less than one shall reside in Southern California. [48]

ARTICLE II.

Ex-Officio Members of the Board.

The Waterfront Employers of Seattle, a corporation, Waterfront Employers of Portland, a corporation, Waterfront Employers Association of San Francisco, a corporation, and Waterfront Employers Association of Southern California, a corporation, shall each be entitled to designate two representatives; one of which shall be selected for his knowledge and experience of stevedoring, the other of terminal or dock operation. It shall be the obli-

Plaintiff's Exhibit 1—(Continued)
gation of all such representatives so designated to attend meetings of the Board of Directors in an advisory capacity only without voting power.

ARTICLE III.

Officers.

The officers of the corporation, none of whom need be members of the Board of Directors, shall consist of a President, one or more Vice-Presidents, a Secretary and Treasurer, and such other offices as the Board of Directors shall from time to time create. All of the officers of the corporation shall hold office at the pleasure of the Board of Directors.

ARTICLE IV.

Powers and Duties of Directors.

The powers and duties of the Board of Directors are:

(a) To appoint and remove at pleasure all officers, agents and employees of the corporation, other than Directors, prescribe such duties for them as may not be inconsistent [49] with law and these by-laws, fix their compensation and require from them, in such cases as the Board may deem appropriate, security for faithful service;

(b) To conduct, manage, and control the affairs and business of the corporation, and to make such regulations therefor, not inconsistent with law and these by-laws, as they may deem best;

Plaintiff's Exhibit 1—(Continued)

(c) To approve and admit to membership persons, firms, associations or corporations qualified therefor under the provisions of the Articles of Incorporation of this corporation and these by-laws; but the Board of Directors shall not admit to membership any firm, person, association or corporation that is managed by, or subsidiary to, or a parent company of any member;

(d) To issue or cause to be issued at any time certificates of membership;

(e) To borrow money and incur indebtedness for the purpose of the corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes and other evidence of debt;

(f) To levy and assess and collect, and provide for the collection of, dues or assessments in accordance with the provisions of these by-laws; but the Board of Directors shall not have power to levy, assess or collect dues or assessments in excess of a maximum rate to be fixed, at a regular or special meeting, by the vote of members holding a majority [50] of the voting power of the entire membership;

(g) Generally to transact all of the affairs of this corporation.

Plaintiff's Exhibit 1—(Continued)

ARTICLE V.

Labor Practice.

No contract, commitment or undertaking which would impose any personal obligation or liability on the members of this corporation shall be made or entered into by this corporation unless and until the same shall first have been authorized or accepted in writing by the member or members to be bound thereby, or has been approved, at any regular or special meeting of the members, by vote of members holding a majority of the voting power of the entire membership, or unless such contract, commitment or undertaking shall have been made or entered into by this corporation pursuant to a delegation of authority conferred by a similar vote.

Liability of Members.

A member who has not authorized or accepted in writing, such contract, commitment or undertaking and who has not voted in favor of the approval thereof, or the delegation of authority with respect thereto, shall not be bound by such contract, commitment or undertaking if such member resigns within seven days after the date of the vote thereon.

No member becoming bound in respect of any contract, commitment or undertaking made by this corporation shall be under any [51] liability with respect to any act taken or omitted thereunder by any other member.

Plaintiff's Exhibit 1—(Continued)

ARTICLE VI.

Resignations and Vacancies in the
Board of Directors.

Section 1. Whenever any vacancy occurs in the office of directors, such vacancy may be filled by an appointee selected by a majority of the remaining directors, although less than the quorum hereinafter specified in Section 3 of Article XIII, and the person so appointed shall hold office until his successor is elected. In case of an increase in the number of directors, the Board of Directors shall have power to fill the new positions, and their appointees shall hold office until the next election of directors by the members, or until their successors have been elected.

Sec. 2. A vacancy in the Board *if* Directors shall be deemed to have occurred whenever a director resigns, which he may do either by presenting his written or oral resignation to the Board or by mailing or telegraphing his resignation to the corporation, or whenever a director dies, or by judgment of a competent court is declared incompetent or insane, or whenever any vacancy is created in accordance with any law of the State of California. Unless otherwise provided herein, any such resignation shall become effective when presented, mailed or telegraphed as aforesaid.

ARTICLE VII.

Election of Directors.

The directors shall be elected annually by the

Plaintiff's Exhibit 1—(Continued)

members at the annual meeting of the [52] members. Their term of office shall begin immediately after election and shall continue until the next annual meeting of the members or until their successors are elected. At all elections a majority of the voting power of the members shall be represented either in person or by proxy in writing.

ARTICLE VIII.

Executive Committee.

The Board of Directors may from time to time appoint an Executive Committee consisting of the President and seven (7) directors. The Board of Directors shall likewise have power to create and appoint such other committees as it may determine from time to time. All of the members of said executive committee and any such other committee shall hold office at the pleasure of the Board of Directors. The Board of Directors may delegate to the executive committee any of the powers and authority of the Board in the management of the business and affairs of the corporation except the power to declare dividends and levy dues or assessments.

ARTICLE IV.

President.

The powers and duties of the President are:

(a) To preside at all meetings of the Board of Directors and of the members;

Plaintiff's Exhibit 1—(Continued)

(b) To call special meetings of the members and also of the Board of Directors, at such times as he may deem proper; [53]

(c) To sign as President of the corporation all deeds, conveyances, mortgages, leases, promissory notes, contracts, obligations, certificates and other papers and instruments in writing that may require such signature, unless the Board of Directors shall otherwise direct, and to perform such other duties as the Board of Directors may determine.

(d) The President shall be a member and serve as ex-officio chairman of the Executive Committee and all other committees.

ARTICLE X.

Vice-Presidents.

The Vice-Presidents shall, in the event of the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board of Directors shall from time to time prescribe.

ARTICLE XI.

Secretary and Treasurer.

The powers and duties of the Secretary and Treasurer are:

(a) To keep a full and complete record of the proceedings of the Board of Directors, meetings of the members, and of all committee meetings;

Plaintiff's Exhibit 1—(Continued)

(b) To keep the seal, books and papers of the corporation, and to affix the seal to all instruments executed by the President, or by direction of the Board of Directors, which may reasonably require it;

(c) To sign, in conjunction with the [54] President, or any Vice-Presidents, all certificates of membership, checks, drafts, promissory notes and other documents unless the Board of Directors shall otherwise direct;

(d) To receive any moneys belonging to or paid into the corporation and to receipt for the same, and to deposit all funds with such depository as the Board of Directors may designate;

(e) To make service and publication of all notices that may be necessary or proper, and without command or direction from anyone. In case of the absence, inability, refusal or neglect of the Secretary to make service or publication of any notice, then such notice may be signed, served and published by the President or any Vice-President, or by any person thereunto authorized by any of them, or by the Board of Directors;

(f) To supervise the keeping of the accounts and of the books of the corporation;

(g) Generally to do and perform all such duties as pertain to his office and as may be required by the Board of Directors, or by the President.

Plaintiff's Exhibit 1—(Continued)

ARTICLE XII.

Membership Meetings—Annual Meeting.

Section 1. There shall be a regular annual meeting of the members of the corporation on the 2nd Wednesday in February of each year beginning with the year 1938, at 2:00 o'clock p.m. of said day, at the office of the corporation; provided, however, that [55] should said meeting day fall upon a legal holiday, said meeting of the members shall be held on the next day thereafter which is not a legal holiday, at the same hour and place. At said regular meeting, directors of the corporation shall be elected to serve for the ensuing year, and until their successors are elected. Notice of the annual meeting of members, and of the election of directors thereat, shall be given by mailing notice thereof stating the nature of the business to be transacted at least five days prior to the date of meeting, addressed to each of the members of the corporation at his or its place of business or residence as the same appears on the books of the corporation, or, in case no business or residence address of a member appears on the books of the corporation, then directed to any address appearing on the books for such member. No other or further notice shall be required.

Special Meetings.

Sec. 2. Special meetings may be called and held at any time by order of the President or four (4) members of the Board of Directors, or ten (10)

Plaintiff's Exhibit 1—(Continued)

members of the corporation, by notice, stating the nature of the business to be transacted at the meeting, given in either of the two following manners:

1. By a four days' notice in writing given to all members in the manner provided in Section 1 of this Article; or

2. By notice transmitted to the place [56] of business of each member by telephone or telegraph at lease twenty-four (24) hours prior to the hour fixed for said meeting.

The latter form of notice shall be given only if the President or four (4) members of the Board of Directors or ten (10) members of the corporation, shall determine that an emergency exists requiring an immediate meeting of the members.

Sec. 3. It shall be the duty of the Secretary, upon demand of the President or four members of the Board of Directors or ten members of the corporation, to prepare and send notice of any special meeting to each member of the corporation in accordance with Section 2 of this Article.

Quorum Members.

Sec. 4. At all meetings of the members, persons representing a majority of the voting power of the membership, either in person or by proxy in writing, or by telegraph, shall constitute a quorum.

Voting Power.

Sec. 5. Each voting member shall have one vote

Plaintiff's Exhibit 1—(Continued)

and in addition one vote for each full 100,000 tons of cargo loaded and/or discharged by or for such member during the preceding calendar year at all Pacific Coast ports of the United States (except Alaska ports) to or from vessels owned, operated or managed by such member. The voting power of agent members shall be determined in the same manner as if the principals for whom such agents are acting were [57] themselves members. Associate members shall have no voting power. The Board of Directors shall have power by resolution to establish general rules for the purpose of ascertaining and determining tonnage for voting purposes. Each member shall report to the Secretary of this corporation on or before the 20th day of each month the tonnage of all cargo loaded or discharged by or for such member as aforesaid at all Pacific Coast ports of the United States (except Alaska ports) during the preceding calendar month, agent members reporting separately the tonnage so loaded or discharged on behalf of the principals on whose behalf they are acting as members. The Secretary of this corporation shall certify to the Board of Directors in advance of the annual meeting the tonnage of cargo loaded and/or discharged by each voting member during the preceding calendar year and the tonnage of cargo loaded and discharged by principals on whose behalf agent members are then acting during such preceding year, and before the annual meeting, the Board of Directors shall consider such report of the Secretary and from said

Plaintiff's Exhibit 1—(Continued)

report and any other source that the Board shall deem appropriate, shall determine the tonnage of cargo so loaded and/or discharged by each member for voting purposes, and said determination shall be final and conclusive upon all members for the ensuing year.

The voting power of all voting members [58] until the annual meeting of 1938 and of all new voting members until the annual meeting of the year following admission to membership shall be determined by the tonnage of cargo loaded and/or discharged by it or on its behalf at all of said ports during the preceding calendar year, the voting power of agent members being determined in the same manner as if the principals on whose behalf they are acting were themselves members; and such tonnage for voting purposes until the annual meeting in 1938, and thereafter from year to year for such new members shall be conclusively determined by the Board of Directors by reference to such sources of information as it shall deem proper.

Cumulative Voting.

Sec. 6. Every member entitled to vote at any election for directors shall have the right to cumulate his votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such member is entitled or to distribute his votes on the same principal among as many candidates as he shall think fit. The candidate receiving the highest

Plaintiff's Exhibit 1—(Continued)

number of votes up to the number of directors to be elected shall be elected.

ARTICLE XIII.

Directors' Meetings.

Section 1. Meetings of the Board of Directors shall be held either at the office of the corporation or at any other place which may be designated by resolution of the [59] Board of Directors. Regular meetings of the Board of Directors shall be held on the 2nd Wednesday of each February, May, August and November at 10:00 a.m., without other or further notice than this by-law; provided, however, that should said meeting day at any time fall upon a legal holiday such meeting shall be held the next day thereafter which is not a legal holiday at the same hour and place.

Special Directors' Meetings.

Sec. 2. Special meetings of the Board of Directors may be called at any time by order of the President or any Vice-President of the corporation or four directors. Notice of a special meeting of the Board of Directors shall state the nature of the business to be transacted and be given each director by mailing notice thereof, at least four days prior to the date of meeting, addressed to each director at his place of business or residence as the same appears on the books of the corporation, or, in case no business or residence address of such director

Plaintiff's Exhibit 1—(Continued)

appears on the books of the corporation then directed to any address appearing on such books for such director.

Emergency Directors Meetings.

In the event that the President or any Vice-President of the corporation, or any four directors thereof, shall determine that an emergency exists requiring an immediate meeting of the said Board of Directors, notice thereof may given not less than twenty-four (24) hours prior to the hour set for said meeting by notice transmitted to the [60] place of business of each director either by telephone or telegraph. No notice other or further than that specified in this Section shall be required. Anything which may be done at a regular meeting of the Board of Directors may be done at a special or an adjourned meeting of the Board.

Quorum Directors.

Sec. 3. Except as otherwise provided in Section 1 of Article VI hereof, a majority of the total authorized number of directors shall constitute a quorum at all directors' meetings.

Organization of Board.

Sec. 4. The Board of Directors elected at any annual meeting of the members shall meet immediately after the adjournment of such members' meeting and organize by the election of officers. No notice of such meeting need be given.

Plaintiff's Exhibit 1—(Continued)

Sec. 5. At any meeting of the Board of Directors every act or decision done or made by a majority of the directors present shall be regarded as the act of the Board of Directors. In the absence of a quorum a majority of the directors present may adjourn from time to time until the time fixed for the following regular meeting of the Board.

ARTICLE XIV.

Meetings of Executive Committee

The Executive Committee shall have power to establish rules governing its own proceedings including the establishment of the place of meeting, any regular time of meeting, and other rules governing its own procedure. Minutes shall be kept of all proceedings [61] of the Executive Committee, which shall be incorporated in and become a part of the minutes of the Board of Directors.

ARTICLE XV.

Initiation Fees.

From and after a future date to be fixed by the Board of Directors, each new member shall pay an initiation fee. Said initiation fee shall be not less than Two Hundred Fifty Dollars (\$250.00) and shall be such amount as may be required to insure a contribution to the assets of the corporation which will bear to the corporation's current assets a proportion substantially equivalent to the voting power of the new voting member; and the Board shall take

Plaintiff's Exhibit 1—(Continued)

into consideration any indirect contributon to such assets already made. Associate members shall not be required to pay any initiation fee unless otherwise directed by the Board of Directors.

ARTICLE XVI.

Dues and Assessments.

In fixing all dues and levying all assessments, the Board of Directors shall determine the amount to be paid by each member per ton of cargo loaded and/or discharged at each United States Pacific Coast port (except Alaska ports). In fixing dues and levying assessments, the Board of Directors, may establish different rates per ton for different classes of cargo and different rates per ton applicable to the different loading, discharging or handling conditions, and the Board of Directors shall also fix rules for calculation of the tonnage loaded, discharged [62] and/or handled by the members thereof, and all rules so established by the Board of Directors shall be applied uniformly among the members. The determination of the Board of Directors of rules for the determination of tonnage rates and classifications thereof, and for the calculation of tonnage, shall be final and conclusive.

Notice of any action taken by the Board of Directors with respect to dues or assessments shall be sent to the members promptly by registered mail and shall not become effective until seven days after such mailing. No member who resigns from the cor-

Plaintiff's Exhibit 1—(Continued)

poration prior to the effective date of such action shall be bound thereby.

ARTICLE XVII.

Admission to Membership.

No firm, person, association or corporation shall become a member of this corporation, unless and until it shall have been approved for such membership by a vote of not less than a majority of the Board of Directors and unless the applicants shall be qualified for membership in accordance with the provisions of the articles of incorporation of this corporation and of these by-laws.

ARTICLE XVIII.

Duties of Members.

Section 1. This corporation shall have power to establish policies for its members and the corporation in all matters relating to labor contracts and labor controversies and shall have power to represent and act on behalf of its members in any negotiations [63] carried on by the corporation on behalf of its members with unions of longshoremen or other employments ashore and, subject to the provisions of Article V of these by-laws, any contracts, commitments or undertakings made by this corporation on behalf of its members with any union shall bind the members of this corporation.

Violations of Contracts.

If any member shall violate, directly or indirectly,

Plaintiff's Exhibit 1—(Continued)

any rule of policy established by this corporation, or procure, encourage or assist in any such violation by any other person, whether a member of this corporation or not, or shall, directly or indirectly, violate any provision of any contract or agreement made by the corporation on its behalf with any longshoremen or other employments ashore or unions thereof, or procure or encourage or assist in any such violation by any other person, whether a member of this corporation or not, or shall violate any other provision of this section or of these by-laws, then, in any such event, the Board of Directors shall have the power, in its discretion, to suspend any such member for such period of time as the Board of Directors shall prescribe or to expel such member from membership in this corporation.

Suspension.

Sec. 2. If any union, its members or officials, shall violate any labor contract or award relating to wages, hours or working conditions to which agreement or award this corporation or any of its members is a party, whether by strikes, stoppages of work or in [64] any other manner, any member affected thereby shall notify the corporation. All appropriate means for peaceful settlement of any such matter shall be pursued with the appropriate officers of the union or unions involved in an endeavor to secure compliance with the terms of such agreement or award. If compliance is not secured, a meeting of the members of this corpora-

Plaintiff's Exhibit 1—(Continued)

tion shall forthwith be called and all members of this corporation shall take whatever action shall be determined by a vote of members holding at least a majority of the voting power of the membership, provided that there shall be no suspension or termination of any such contract or agreement for breach thereof without the consent of members representing at least two-thirds of the voting power of the entire membership. Provided further that written notice of any such vote or consent shall be immediately given by registered mail to all members and no such vote or consent shall bind any member who did not join therein and who resigns within seven days after the date of mailing of such notice.

ARTICLE XIX.

Resignation.

Any member may resign by submitting its written resignation at any meeting of the Board of Directors or of the members, or by mailing or telegraphing its resignation to the corporation; and thereupon such resignation, without the necessity of any acceptance, shall become effective forthwith [65] unless otherwise specified therein, provided, however, that no such resignation shall become effective until full payment of all arrears for dues and assessments to which such member has become liable. In the event that any member shall resign from membership in this corporation or shall be expelled from membership therein, all interest of

Plaintiff's Exhibit 1—(Continued)

such member in this corporation or in any of its property shall forthwith cease and terminate, provided, however, that no such resignation or expulsion and no suspension from membership in this corporation shall terminate or affect any liability of such member which may have heretofore accrued, nor affect any obligation of such member under or pursuant to the terms of any labor contract or agreement theretofore made or entered into on its behalf by this corporation. The Board of Directors shall likewise have power to impose any penalties or other conditions to the readmission of any such former member to membership in this corporation, or to the termination of any suspension of any member.

ARTICLE XX.

Financial Assistance to Members.

If any labor union or association of working men or any members of any such union or association shall violate any agreement with this corporation, or with any member thereof, or shall refuse to work for any member or members of this corporation, the Board of Directors shall, upon application, [66] cause investigation to be made, and if the Board of Directors shall find that such union or association is at fault, and fails or refuses to make reparation or otherwise remedy such violation or refusal to the satisfaction of the Board of Directors, and if this corporation after investigation shall desire to resist the demands of such union or member thereof,

Plaintiff's Exhibit 1—(Continued)

this corporation shall render to such member or members of this corporation the fullest moral support, and shall pay such expenses incurred by such member in any strike, lockout or other labor trouble caused by such action of the union, association or member or members thereof, as shall be approved and limited by the Board of Directors of this corporation in advance. No personal obligation or liability on the part of any member of the corporation shall accrue under this Article XX or by virtue of any action taken by the corporation hereunder, provided that the foregoing shall not be deemed to affect the power of the Board of Directors to levy assessments in the manner provided in Article XVI of these by-laws for the purpose of rendering assistance to members as permitted by Article XX.

ARTICLE XXI.

Final Distribution of Assets.

Upon the dissolution of this corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets, if any, shall be divided among the voting members, as follows: Each [67] voting member shall receive that proportion of the assets which the total amount of dues and assessments assessed upon and paid by such voting member to the corporation during the preceding calendar year shall bear to the total amount of such dues and assessments assessed upon and paid by all voting members during the same

Plaintiff's Exhibit 1—(Continued)
year. Associate members shall not participate in
the assets of this corporation on dissolution.

ARTICLE XXII.

Amendments.

These by-laws may be amended at any regular or
special meeting of the members in the notice of
which the substance of the proposed amendment has
been stated, by the vote of members holding two-
thirds of the voting power of the entire member-
ship. [68]

PLAINTIFF'S EXHIBIT 2

Admitted March 22, 1945.

WATERFONT EMPLOYERS OF WASHINGTON

Amended Articles of Incorporation
and By-Laws

Incorporated 1934

February 23, 1940 [70]

Amended Articles of Incorporation

Known All Person by These Presents:

That the undersigned incorporators, being six in
number, desiring to create a non-profit corporation
under the laws of the State of Washington (R. R.

Plaintiff's Exhibit 2—(Continued)

S. Secs. 3888-3900) do hereby prepare, execute and acknowledge Articles of Incorporation:

ARTICLE I.

The name of the corporation shall be "Waterfront Employers of Washington."

ARTICLE II.

The life term of the corporation shall be forty-nine years.

ARTICLE III.

The principal office of the corporation shall be in the city of Seattle, county of King, state of Washington.

ARTICLE IV.

The purposes and powers of the corporation shall be:

1. To function as an intermediary between employers and employees, directly or indirectly concerned in the commercial movement and handling of goods;
2. To assist warehousemen, wharfingers and carriers of goods by water, rail or auto, in hiring and retaining ample, reliable and competent supply of labor; and to assist individual laborers in promptly and conveniently securing suitable jobs under satisfactory conditions at available wages; [71]
3. To establish, operate and maintain offices and employment halls for the centralization of informa-

Plaintiff's Exhibit 2—(Continued)

tion, registration and distribution of jobs and laborers;

4. To establish, operate and maintain places and means of housing, feeding, protecting and amusing laborers during time off the job;

5. To establish, operate and maintain regular or intermittent lines of expeditious transportation of and for laborers to and from job locations;

6. To encourage efficient and safe conditions during time on the job;

7. To compile and preserve statistical records as to laborers, jobs, earnings, costs, conditions of work, causes of accidents, safety practices, personal injury compensation, and other data;

8. To formulate advisory policies or rules for promotion of cooperative relationship between employers and employees; to publish and circulate trade reports and statistical material;

9. To render and perform any lawful service or function beneficial to waterfront industries, linking land and water commerce;

10. To create, regulate and terminate memberships in the corporation, all of which shall be equal as to vote, authority and interest in the affairs and assets of the corporation, none of which shall be subject to any assessment or liability, other than or in excess of initial membership fees and periodic dues; and to issue, alter and cancel membership certificates;

Plaintiff's Exhibit 2—(Continued)

11. To employ and discharge all agents and servants at will;

12. To do anything permissible under the statutes of the State of Washington concerning non-profit corporations;

13. To do anything reasonably implied by or incidental to any purpose or power above mentioned. [72]

ARTICLE V.

The Trustees of the corporation shall manage its affairs and exercise its powers, except as otherwise provided by the statutes of the state of Washington or by the corporate By-Laws.

The Trustees shall not be more than twelve in number, subject to decrease or increase by consent of two-thirds of the membership of the members to not less than three or more than twelve. The Trustees shall be chosen and removed as determined by the corporate By-Laws, provided that for the organization period of not less than two months nor more than six months, the initial Trustees shall be the following persons: Dean D. Ballard, H. W. Burchard, W. C. Dawson, E. A. Quigle, K. Sawai, H. A. Shook, W. D. Vanderbilt, W. F. Varnell and C. B. Warren

ARTICLE VI.

The corporation shall possess a seal, to be adopted

Plaintiff's Exhibit 2—(Continued)
and used as required by the By-Laws, the design of
which shall include its corporate name.

ARTICLE VII.

Amendments, not inconsistent with the non-profit classification of the corporation, may be made to these Articles of Incorporation, as authorized by the statutes of the State of Washington.

In Witness Whereof, the incorporators have subscribed their names, hereby adopting the foregoing Articles of Incorporation, upon this 15th day of June, 1934, at Seattle.

W. D. VANDERBILT

H. A. SHOOK

E. A. QUIGLE

H. W. BURCHARD

K. SAWAI

W. C. DAWSON [73]

State of Washington,
County of King—ss.

On this day personally appeared before me Dean D. Ballard, H. W. Burchard, W. C. Dawson, E. A. Quigle, K. Sawai, H. A. Shook, W. D. Vanderbilt, W. F. Varnell and C. B. Warren, to me known to be the individuals described in and who executed the foregoing instrument, and each for himself acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Plaintiff's Exhibit 2—(Continued)

Given under my hand and official seal this 15th day of June, 1934.

[Seal] LANE SUMMERS,
Notary Public in and for the State of Washington,
residing at Seattle. [74]

Amended By-Laws

Whereas, Articles of Incorporation of Waterfront Employers of Washington, a non-profit corporation of the State of Washington, have heretofore been prepared, executed and acknowledged, and also have heretofore been filed as provided by law;

Whereas, the undersigned, being all the incorporators and all the members of said corporation, have assembled together in a meeting (prior to transaction of business and acquisition of property), and after due deliberation have adopted, by unanimous vote, corporate by-laws;

Now, Therefore, such By-Laws, being written, recorded and subscribed within this book pursuant to statutory requirements, are as follows:

1. That the initial Trustees of the corporation, named in its Articles of Incorporation, shall, immediately following the adoption of these By-Laws, and pursuant hereto, perfect the organization, and elect officers to serve until their successors are elected and qualified. That the provisions of these By-Laws shall apply to such initial officers.

Plaintiff's Exhibit 2—(Continued)

2. That this corporation shall exist and function without profit.

3. That this corporation shall have no capital stock, no stock shares or stock dividends.

4. That this corporation shall be composed solely of members, being individuals, copartnerships or corporations directly or indirectly engaged as employers of labor in commercial transportation or handling of goods by or over water, rail, truck, docks or warehouses.

5. That the interest of each member (whether becoming such contemporaneously with or subsequent [75] to incorporation) shall be equal to that of any other; and no member shall acquire any greater voice, right, vote, authority or interest than any other.

6. That membership shall be created as the result of the following:

(a) Election by a majority vote of all trustees or of all members, evidenced by resolution in meeting, or by signed writing circulated without meeting;

(b) Subscription to these By-Laws.

(c) Payment of initiation fee.

7. That membership shall be evidenced by a certificate, issued by the corporation over its seal and the signature of the President or Secretary, which shall expressly specify that such membership is

Plaintiff's Exhibit 2—(Continued)

subject to no assessment or liability other than or in excess of initial membership fees and periodic dues; that membership certificate shall be in substantially the following form:

“Waterfront Employers of Washington
Membership Certificate

Know All Persons:

That, upon election, having subscribed to the By-Laws and paid the initial fee, now is a member of Waterfront Employers of Washington, a non-profit corporation of the State of Washington, with all rights and obligations of membership, the same not being subject to any assessment or liability other than or in excess of initial membership fee and periodic dues.

In Witness Whereof, this certificate has been issued day of, 19...., at Seattle.

.....
President-Secretary.”

8. That all members in good standing shall have the right to resort to the corporation for services within the scope of its operations. [76]

9. That all members shall be obligated to pay an initiation fee in the sum of \$10.00, and to pay uniform periodic dues in the amount and at the time as required by the Trustees.

10. That no member, delinquent for more than

Plaintiff's Exhibit 2—(Continued)

thirty days in the payment of dues, shall be in good standing during such delinquency.

11. That any member not in good standing for failure to pay dues shall be subject to expulsion by a majority vote of all Trustees or of all members. That written notice by the corporation of such expulsion to the member shall operate automatically in cancellation of membership certificate. That any member may terminate membership by voluntary withdrawal. That all memberships shall be cancelled by death, dissolution or adjudicated insolvency. Termination of membership shall not relieve the member from obligation to pay due previously accrued.

12. This corporation shall have power to establish policies for its members and the corporation in all matters relating to labor contracts and labor controversies and to the enforcement and performance thereof and shall have power to represent and act on behalf of its members, either itself or through other agencies to be designated by the Trustees, in any negotiations with unions of longshoremen or other employees ashore, and any contracts, commitments or undertakings made on behalf of the members of this corporation pursuant to the provisions hereof with any union shall bind the members of this corporation. If any member shall violate, directly or indirectly, any rule or policy established by this corporation, or procure, encourage or assist any such violation by any other person, whether a

Plaintiff's Exhibit 2—(Continued)

member of this corporation or not, or shall, directly or indirectly, violate any provision or agreement made by the corporation on its behalf with any longshoremen or other shore employees or unions thereof, or procure, encourage, or assist in any violation by any other person, whether a member of this [77] corporation or not, or shall violate any other provision of this section or of these By-Laws, then, in any such event, the Trustees shall have the power, in their discretion, to suspend any such member for such period of time as the Trustees shall prescribe, or expel such member from membership in this corporation, provided, however, that no such suspension or expulsion shall in any manner terminate or affect any liability of such member to this corporation which may have theretofore accrued.

13. That any member in good standing may assign his membership to any assignee, qualified in the discretion of the Trustees, by signed endorsement upon the membership certificate, such assignment, however, not to be effective as to the corporation until the assignee has subscribed to these By-Laws, and until the original membership certificate has been relinquished and cancelled and a substitute certificate issued.

14. That annual meetings of the members shall be held on the last Thursday of January, the hour and location of such meetings to be designated by the President, and notice sent members sufficiently

Plaintiff's Exhibit 2—(Continued)

in advance to permit attendance. That special meetings of the members shall be held as called by the President, any two Trustees, or any three members by written notice specifying the time and place of such meeting sufficiently in advance to permit attendance. That at meeting of the members, a majority of the membership shall constitute a quorum for the transaction of business. That any number shall be sufficient to authorize an adjournment to a specified time and place for lack of a quorum.

15. That trustees shall be nominated by a committee of three appointed by the Board of Trustees. They shall nominate double the number of trustees required from among duly qualified members. Of those nominated, the fifty per cent receiving the highest number of votes shall be declared duly elected Trustees. Nominations shall be submitted to the membership on or before [78] December 15th of each year by secret ballot and the polls shall be closed as of December 31st. That Trustees so elected shall serve as such to manage the affairs and exercise the powers of the corporation for the period of one year and until their successors are elected and qualified.

16. That vacancies among the Trustees caused by death or resignation may be filled by majority vote of the remaining Trustees until the next annual meeting of members; that such vacancies caused by removal by the members may be filled by majority

Plaintiff's Exhibit 2—(Continued)

vote of the members until the next annual meeting thereof.

17. That the Trustees of the corporation shall manage its affairs and exercise its powers, subject to such limitations as are imposed by law, and as may hereafter be imposed from time to time by the members in annual or special meetings.

18. That no person shall be eligible to election and service as a trustee of the corporation unless he shall be an individual member, or unless he shall be connected with a copartnership or corporate member in some responsible, representative capacity; no person shall be qualified as a trustee until he shall have subscribed to an oath, obligating him to support the constitution and laws of the State of Washington, and to faithfully perform his duties as trustee.

19. That special meetings of the Trustees may be called informally at any time and place by the President of the corporation, or by any two Trustees, upon written or oral notice, specifying the time and place of such meeting, sufficiently in advance to permit attendance. That a majority of the Trustees, in attendance at any annual or special meeting, shall be sufficient for the transaction of business. That any number shall be sufficient to authorize an adjournment to a specified time and place for lack of a quorum.

20. That the Trustees as such shall receive no compensation. [79]

Plaintiff's Exhibit 2—(Continued)

21. That at the Annual Meeting of the Trustees, which is to be held on the last Thursday of January, immediately following the membership meeting, or adjournment thereof, the Trustees shall elect officers of the corporation to serve as such and perform their respective duties for a period of one year and until their successors are elected and qualified.

22. That vacancies in any office, by death, resignation or removal, may be filled by majority vote of the Trustees until the next annual meeting of Trustees.

23. That the officers of the corporation shall consist of a President, a Vice-President, a Treasurer and a Secretary. That the eligibility requirements of the Trustees shall not be applicable to officers; that the Trustees may elect one person to serve in more than one office.

24. That the Trustees may from time to time create and abolish other offices, and may specify or alter the duties of any office.

25. That the President of the corporation, if in attendance, shall preside at all meetings of the Trustees and of the members; he shall be authorized to sign all membership certificates, to execute in the name of the corporation all contracts and obligations within the scope of its ordinary operations, without special authorization from the Trustees; he shall, with the approval of the Trustees, appoint and remove all staff personnel, including

Plaintiff's Exhibit 2—(Continued)

agents, and designate their duties and authority; and he shall likewise fix their compensation; he shall perform such other duties as may be expressly or impliedly required by these By-Laws or prescribed by the Trustees; he shall generally do and perform the duties usually devolving upon an officer of like capacity.

That the Vice-President of the corporation, in the absence of the President, shall have the same authority and responsibility as the President.

26. That the Treasurer of the corporation shall keep, or cause to be kept, full and complete records [80] and books of account, concerning the finances of the corporation; he shall have authority to open and maintain accounts of deposit with one or more responsible banks; to receive and disburse, by check or otherwise, all moneys of the corporation in its routine operation without special authorization from the Trustees, and he shall generally do and perform those duties usually devolving upon any officer of like capacity.

27. That the Secretary of the corporation shall attend the meetings of the Trustees and the members; he shall keep accurate minutes and records of such meetings; he shall be custodian of the seal of the corporation, and, without special authority of the Trustees, affix the same with his signature or the signature of the President to membership certificates and any contracts customarily requiring such seal; he shall be the custodian of the corporate

Plaintiff's Exhibit 2—(Continued)

records; he shall supervise all statistical research and compilations thereof; he shall keep a correct and accurate record of all memberships, the issuance, assignment and termination thereof; he shall generally do and perform those duties usually devolving upon an officer of like capacity.

28. That the officers of the corporation shall or shall not receive compensation, in the discretion of the Trustees, who shall fix the amount of any compensation allowed, and increase or decrease the same.

29. That the Trustees shall exercise care in fixing from time to time the rate of the uniform periodic membership dues, so that the aggregate thereof shall be equivalent to the original and maintenance cost of the properties, facilities, equipments, supplies and services of the corporation, as prescribed by the Trustees; that, nevertheless, the Trustees may create a reserve surplus fund within the limits permitted by law, from which to meet anticipated cost of necessary major investments in properties, facilities or equipment, to cover current expenses during periods [81] when the aggregate of dues is insufficient to defray the same and to meet emergency outlays.

That dues as fixed by the Trustees shall never be made to operate retroactively.

That contributions by members to ordinary or extraordinary expenses shall be credited to such

Plaintiff's Exhibit 2—(Continued)

members upon their dues, such credit to be allowed as determined by the Trustees.

30. That refund, if any, of surplus or dues shall be made only upon a two-thirds vote of all members at the time and in the manner specified by resolution thereof.

31. That in harmony with the phraseology of membership certificate, no membership shall be subject to assessment or liability other than or in excess of initial membership fees or periodic dues.

32. That all notices (whether written or oral) required in these By-Laws, shall be sufficient and regular, if mailed, delivered or made to the usual office or abode of the member or trustees, as published in the city or telephone directory of his place of residence, or as known to the officers of the corporation: provided, however, that reasonable effort shall be exerted to convey actual notice, if the member or trustee be available within the city of Seattle.

That at annual or special meetings of members or trustees, any lawful business may be transacted without disclosure of the purpose of such meeting, except only as herein otherwise provided.

33. That no meeting of Trustees shall be requisite to any resolution or authorization, if the same shall be approved in writing over the signature of all Trustees.

34. That the seal of the corporation shall carry

Plaintiff's Exhibit 2—(Continued)

its name, "Waterfront Employers of Washington," together with the words "Corporate Seal, 1934, State of Washington." [82]

35. That amendment may be made to the Articles of Incorporation and/or these By-Laws, and dissolution of the corporation may be effected only by the members. That the Articles of Incorporation and/or these By-Laws may be amended by a two-thirds vote of all members, at any meeting, annual or special, notice of which has disclosed such purpose.

36. Upon the dissolution of this corporation, after paying or adequately providing for the debts of the corporation, the remaining assets, if any, shall be divided among the members as follows: Each member shall receive that proportion of the remaining assets which the contributions paid by him during the two years immediately preceding the date of dissolution bear to the total amount of contributions paid by all members during the said period.

In Witness Whereof, all incorporators and subsequent members of the corporation have subscribed their names and listed their addresses to the foregoing By-Laws at Seattle, Washington.

W. D. VANDERBILT H. W. BURCHARD

H. A. SHOOK

K. SAWAI

E. A. QUIGLE

W. C. DAWSON [83]

PLAINTIFF'S EXHIBIT 3-A

Offered by Defendant. Admitted Mar. 27, 1945

Copy of Resolution of July 31, 1937

1. That the expense of collective reporting and Central Pay Offices be assessed on a payroll basis against the participating employers of longshore or other labor handled through the Central Bureaus, and that this function be administered by the local port associations.

2. That one assessment to cover all other activities of both the Coast Association and the local port associations be levied upon the following basis:

'Off-shore and Intercoastal Cargo:

General cargo 2c per manifest ton

Lumber 2c per M ft.

Bulk cargo dry 4c per ton

(Bulk fluid cargo exempt)

Transshipped cargo $1\frac{1}{2}$ rate of foregoing
(Each vessel)

Coastwise cargo:

$1\frac{1}{2}$ off-shore rates paid in and out (when handled by crew and longshoremen), tonnage to be taxed is to be calculated proportionate to man-hours of longshoremen and crew actually handling cargo.

Operators who are not members of either individual port association or the Coast Association:

$21\frac{1}{2}$ c per man per hour.

3. That budgets covering all activities conducted

in the local ports, other than collective reporting and Central Pay Offices, be set up by local port authorities, subject to the approval of the Directors of the Coast Association.

4. That all assessments other than those in support of collective reporting and Central Pay Offices be collected by the Coast Association, and that out of the income derived therefrom a sum sufficient to meet the port budgets be allocated to the individual port association.

5. That the fiscal year for the Coast Association be fixed as a period from January 1st to December 31st; that it be recommended that each port association adopt the same fiscal year.

6. That the budgets for the port associations and the budget for the Coast Association be referred to the Executive Committee for consideration and approval, with the understanding that budgets now approved will continue until December 31st, 1937, at which time new budgets for the fiscal year 1938 be presented for consideration of the Board of Directors of this Association. [84]

PLAINTIFF'S EXHIBIT 5

Admitted March 22, 1945

May 11, 1938

“Whereas, the present rate of assessment of the Waterfront Employers Association of the Pacific Coast has been insufficient to meet expenses, and it

being determined that additional income will have to be raised for this purpose, now

“Therefore Be It Resolved, That effective June 1st, 1938, the rate of assessment levied on all cargo loaded and/or discharged at Ports on the Pacific Coast of the United States (except Alaska ports) be as follows:

Off-shore and Intercoastal Cargo:

General cargo $21\frac{1}{2}$ c per manifest ton

Lumber $21\frac{1}{2}$ c per M feet

Bulk cargo dry 5/10c per ton

(Bulk fluid cargo exempt)

Transshipped cargo ... $1\frac{1}{2}$ rate of foregoing
(Each vessel)

Coastwise Cargo:

$1\frac{1}{2}$ off-shore rates paid in and out (when handled by crew and longshoremen), tonnage to be taxed is to be calculated proportionate to man-hours of longshoremen and crew actually handling cargo.’

“Be It Further Resolved that the notification to members of the increase in assessment rates as provided in the By-Laws be accompanied by a letter explaining fully the necessity for increasing the assessment rate at this time.” [85]

PLAINTIFF'S EXHIBIT 6

Admitted March 22, 1945

Waterfront Employers Association
Of the Pacific Coast
Federal Reserve Bank Building
Sansome at Sacramento Street
San Francisco, Cal.

May 20th, 1938

Members:

Effective June 1st, 1938, the Board of Directors of the Waterfront Employers Association of the Pacific Coast adopted tonnage assessment rates as follows:

Off-shore and Intercoastal Cargo:

General cargo 21½c per manifest ton
Lumber 21½c per M board feet
Bulk dry cargo 5/10c per ton
(Bulk fluid exempt)
Transshipped cargo ... ½ rate of foregoing
(Each vessel)

Coastwise Cargo:

½ off-shore rates paid in and out (when handled by crew and longshoremen), tonnage to be assessed is to be calculated proportionate to man-hours of longshoremen and crew actually handling cargo.

Very truly yours,

A. BOYD.

Secretary-Treasurer.

WATERFRONT EMPLOYERS
ASSOCIATION OF THE PA-
CIFIC COAST.

AB:LK

This is to certify that the above is a true and correct copy of letter to members of the Waterfront Employers Association of the Pacific Coast from the Secretary-Treasurer, dated May 20, 1938.

[Seal]

A. BOYD,

Secretary.

12/3/43.

Exhibit 3.

PLAINTIFF'S EXHIBIT 7

Admitted March 22, 1945

February 14, 1940

“Whereas, on July 31, 1937, the Board of Directors of the Waterfront Employers Association of the Pacific Coast adopted a resolution, subsequently confirmed in writing by the membership, setting forth therein, among other things, the rate and basis for levying tonnage assessments to cover certain activities of both the Coast Association and local port association; and

“Whereas, confusion has arisen from time to time as to the basis for reporting tonnage and levying assessments;

“Now, Therefore Be It Resolved, that the rate and basis for reporting tonnage and levying assessments effective February 1, 1940, be and is as follows:

“That one assessment to cover all activities of both the Coast Association and the local port association as determined by the Board of Directors

be levied upon the following basis upon all tonnage loaded or discharged at all U. S. Pacific Coast ports (except Alaska ports);

“Off-shore and Intercoastal Cargo:

| | |
|---------------------------|----------------------|
| General cargo | 2½c per manifest ton |
| Lumber | 2½c per M Bd. feet |
| Bulk cargo dry | .5/10 per ton |
| (Bulk fluid cargo exempt) | |

“Transshipped cargo ½ rate of foregoing
(Each vessel)

“Coastwise Cargo:

One-half off-shore rates paid in and out. (when handled by crew and longshoremen), tonnage to be taxed is to be calculated proportionate to man-hours of longshoremen and crew actually handling cargo.

“When ocean revenue is based on weight, 2,000 pounds equals 1 ton, and when ocean revenue is based on measurement, 40 cubic feet equals 1 ton.”

PLAINTIFF'S EXHIBIT 8

Admitted March 22, 1945

May 8, 1940

“Be It Resolved, That the Chair appoint a Committee consisting of the Port Managers and such Stevedore Members as are available together with the Port Treasurer to meet during today's noon recess and prepare a report for further consideration of the Board, concerning the collection of non-member assessments.”

PLAINTIFF'S EXHIBIT 9

Admitted March 22, 1945

May 8, 1940

“Be It Resolved, That it be the recommendation of this Board of Directors that the final draft of the report on the collection of non-member assessments be left to the discretion of the Committee appointed by the Chair, consisting of the managers, contracting stevedores who are ex-officio members of the Board and the Coast Treasurer to develop the policy, for assessing and collecting non-member tonnage and that final action taken by the Committee and consented to in writing by the majority of the member stevedores in the several ports in connection therewith be approved as the action of this Board.

“(The Committee's Report as finally adopted is attached and made a part of these Minutes.)”

The Committee's Report attached thereto was the following memorandum agreement:

“May 9, 1940

Memorandum Agreement

Pursuant to Resolution of the Board of Directors of the Waterfront Employers Association of the Pacific Coast, passed on May 8, 1940, which rescinds the resolution of February 15, 1940, on this subject:

The Stevedore members of the District Waterfront Employers Associations undertake to collect and remit to the Waterfront Employer Associations

the uniform coast tonnage tax on all cargo handled by them for non-member steamship companies. Each stevedore will include in his contract with non-members——

‘The company (here put in name of party to contract) agrees to observe the labor agreements of the Waterfront Employers Association under which this contract is carried on by the stevedore, to which agreements the stevedore is a party; and further agrees to reimburse the stevedore for the port labor charge assessed against the cargo by the Waterfront Employers Associations where the labor is performed. For your information, the current rates are:

as authorized by the enclosed tariff of the Waterfront [89] Employers Association.

The Coast Association will keep the stevedore members advised through the District Association of——

1. The list of member steamship companies (for whom the stevedore accepts no responsibility for payment of tonnage tax);
2. Current tonnage assessments rates;
3. The method and forms of reporting tonnage and remitting assessments.

The Coast Association will consider relieving member stevedores from payment of tonnage assessments for non-member lines upon written statement of the facts that they have tried but failed to collect under the foregoing contract provisions.

The District Associations undertake to collect from non-member stevedores for their non-member steamship companies the man-hour charge of 4c in lieu of the membership tonnage, and remit to the Coast Association.

The foregoing is effective
(Date)

Initialed by:

Member Stevedores

.....
.....
.....
.....
.....

Waterfront Employers of Wash-
ington,

By.....

Waterfront Employers of Port-
land,

By.....

Waterfront Employers Associa-
tion of Southern California,

By.....

Waterfront Employers Associa-
tion of San Francisco and of the
Pacific Coast,

By.....

Exhibit F

PLAINTIFF'S EXHIBIT 10

Admitted March 22, 1945

Phone Exbrook 3913

Waterfront Employers Association
Of the Pacific CoastFederal Reserve Bank Building
Sansome at Sacramento Street
San Francisco, Cal.

May 9, 1940

Members:

Tonnage Assessments

The Board of Directors, on February 15, 1940, adopted the following clarification for reporting and levying tonnage assessments:

The rate and basis for reporting tonnage and levying assessments effective February 1, 1940, be and is as follows:

Upon all tonnage loaded or discharged at all U. S. Pacific Coast ports (except Alaska ports):

Off-shore and Intercoastal Cargo:

General cargo $21\frac{1}{2}$ c per manifest tonLumber $21\frac{1}{2}$ c per M Bd. ft.Bulk cargo dry $5/10$ per ton

(Bulk fluid cargo exempt)

Transshipped cargo ... $1\frac{1}{2}$ rate of foregoing

(Each vessel)

Coastwise Cargo:

$1\frac{1}{2}$ off-shore rates paid in and out. When handled by crew and longshoremen, tonnage to be taxed is to be calculated proportionate to

man-hours of longshoremen and crew actually handling cargo.

When ocean revenue is based on weight, 2,000 pounds equals 1 ton;

When ocean revenue is based on measurement, 40 cubic ft. equals 1 ton.

A. BOYD,
Secretary.

EXHIBIT 5

This is to certify that I have carefully compared the transcript, to which this certificate is attached with the record on file in this office of which it purports to be a copy, and that the same is a full, true and correct copy thereof.

A. BOYD,
Secretary-Treasurer, Waterfront Employers Association of the Pacific Coast.

Dated at San Francisco this 26th day of Nov. 1943. [91]

PLAINTIFF'S EXHIBIT No. 10

May 9, 1940

Memorandum Agreement

Pursuant to Resolution of the Board of Directors of the Waterfront Employers Association of the Pacific Coast, passed on May 8, 1940, which re-

scinds the resolution of February 15, 1940, on this subject:

The stevedore members of the District Waterfront Employers Associations undertake to collect and remit to the Waterfront Employer Associations the uniform coast tonnage tax on all cargo handled by them for non-member steamship companies. Each stevedore will include in his contract with non-members——

“The company (here put in name of party to contract) agrees to observe the labor agreements of the Waterfront Employers Association under which this contract is carried on by the stevedore, to which agreements the stevedore is a party; and further agrees to reimburse the stevedore for the port labor charge assessed against the cargo by the Waterfront Employers Associations where the labor is performed. For your information, the current rates are:

as authorized by the enclosed tariff of the Waterfront Employers Association.

The Coast Association will keep the stevedore members advised through the District Associations of—— [92]

1. The list of member steamship companies (for whom the stevedore accepts no responsibility for payment of tonnage tax);
2. Current tonnage assessment rates;
3. The method and forms of reporting tonnage and remitting assessments.

The Coast Association will consider relieving member stevedores from payment of tonnage assessments for non-member lines upon written statement of the facts that they have tried but failed to collect under the foregoing contract provisions.

The District Associations undertake to collect from non-member stevedores for their non-member steamship companies the man-hour charge of 4c in lieu of the membership tonnage, and remit to the Coast Association.

The foregoing is effective
(Date)

Initialed by:

Member Stevedores:

Griffiths & Sprague Stevedoring
Co.

J. Weber.

Northern Stevedores, Inc.

F. E. Settersten.

Waterfront Employers of Wash-
ington,

By.....

Waterfront Employers of Port-
land,

By.....

Waterfront Employers Associa-
tion of Southern California,

By.....

Waterfront Employers Associa-
tion of San Francisco and of
the Pacific Coast,

By.....

PLAINTIFF'S EXHIBIT 11

Admitted March 22, 1945

"Be It Resolved That effective May 1st, 1940, each port association levy against non-members an assessment of four (4c) cents per man-hour for all longshoremen ordered and dispatched from the hiring hall to perform their work, and that all man-hour assessments collected be remitted to the Waterfront Employers Association of the Pacific Coast as part of the general funds of said Association."

Exhibit 4

PLAINTIFF'S EXHIBIT 12

Admitted March 22, 1945

August 14, 1940

"The great majority of contract stevedores have voluntarily accepted the program laid down by this Board and agreed to be responsible for the collection of assessments on non-member tonnage handled by them. A few firms have thus far refused to accept this responsibility. In fairness to those who have agreed to take it, your committee recommends that formal action be taken by this Board making acceptance of responsibility for non-member tonnage assessments a condition of membership for all contracting stevedore firms after a period allowing reasonable notice to those firms who have not voluntarily complied with this requirement."

Above recommendation adopted by the Board.
Exhibit G

PLAINTIFF'S EXHIBIT 13

Admitted March 22, 1945

Phone EXbrook 3913

Waterfront Employers Association
Of the Pacific Coast
Federal Reserve Bank Building
Sansome at Sacramento Street
San Francisco, Cal.

August 17, 1940

Members:

CONTRACT STEVEDORES
NON-MEMBER ASSESSMENTS

The Board of Directors at their regular Quarterly Meeting held in San Francisco August 14, 1940, unanimously adopted the recommendation of the Budget and Finance Committee reading as follows:

“The great majority of contract stevedores have voluntarily accepted the program laid down by this Board and agreed to be responsible for the collection of assessments on non-member tonnage handled by them. A few firms have thus far refused to accept this responsibility. In fairness to those who have agreed to take it, your committee recommends that formal action be taken by this Board making acceptance of responsibility for non-member tonnage assessments a condition of membership for all contracting stevedore firms after a period allowing

reasonable notice to those firms who have not voluntarily complied with this requirement.”

A. BOYD,

Secretary-Treasurer.

WATERFRONT EMPLOYERS
ASSOCIATION OF THE PA-
CIFIC COAST.

This is to certify that the above is a true and correct copy of letter of August 17, 1940, from the Secretary-Treasurer of the Waterfront Employers Association of the Pacific Coast to its members.

[Seal]

A. BOYD,

Secretary.

12-3-43

Waterfront Employers As-
sociation of the Pacific
Coast. [97]

Exhibit 6

PLAINTIFF'S EXHIBIT 14

Admitted March 22, 1945

March 12, 1941

“Be It Resolved, That it be the recommendation of this Board that when contracting stevedore members of any port association handle cargo for

the United States Army or the United States Navy, that the contracting stevedores be required to collect the tonnage assessment and pay the Association assessments for such cargo handled in conformity with the agreement, authorized by the Board May 8, 1940, and signed by all of the contracting stevedore members of the several port associations on the Pacific Coast." [97-A]

Exhibit H

PLAINTIFF'S EXHIBIT 15

Admitted March 22, 1945

April 16, 1942

"Be It Resolved, That the Treasurer of this Association be instructed to request all Member Companies and Contracting Stevedores, Members of the several Port Associations, to regularly report at monthly intervals, all tonnage handled by them for the account of the Army and the Navy, and that reporting of such tonnage be immediately submitted of all tonnage in the past which has not been so reported to the Association, and

"Be It Further Resolved, That the Treasurer be authorized to outline to the Member Companies and Contracting Stevedores the manner of reporting Army and Navy tonnage to the Association."

Exhibit I

PLAINTIFF'S EXHIBIT 16

Admitted March 22, 1945

Phone EXbrook 3913

Waterfront Employers Association
Of the Pacific Coast
Federal Reserve Bank Building
Sansome at Sacramento Street
San Francisco, Cal.

April 27, 1942

To Members:

Re: Tonnage Assessments, Army and Navy
Cargoes.

At a Meeting of the Board of Directors of the Coast Association April 16, 1942, the Treasurer of the Association was authorized to request all Member Companies and Contracting Stevedores, Members of the several Port Associations, or Associate Members of the Coast Association, to regularly report at monthly intervals all tonnage handled by them for account of the Army and Navy, also that all Army and Navy tonnage handled in the past, be immediately reported to the Association, either at San Francisco, or to one of the other Port Associations in accordance with past practice in reporting tonnage.

The Treasurer was further authorized to outline to the Member Companies and Contracting Stevedores, the manner of reporting Army and Navy tonnage to the Association.

In the past Shipping Members of the Association have reported all of their own cargo, and such non-member cargo handled where they acted as Agents, regardless of whether the stevedoring was done by themselves, or by a Contracting Stevedore, and all Contracting Stevedores handling cargo for non-Member Lines were obligated, by Resolution of the Board, and by a jointly signed Agreement by the Contracting Stevedores to report to the Association all such non-Member tonnage, and also to protect the Associations' tonnage and assessments.

It is our understanding, under the present or proposed Army and Navy Contracts under which Army and Navy cargoes are handled, that provision is made therein for paying a portion of the Association's tonnage assessments to the Contracting Stevedore handling such cargo, but no provision is made for paying any portion of the tonnage assessment to the Steamship Company who acts as Terminal Operator in connection with the same cargo under Terminal Contract with the Army and Navy.

In light of the above, it is requested that all Contracting Stevedores, Members of the several Port Associations, and Steamship Operators who handle their own stevedoring operations, report monthly on the regular tonnage assessment forms, which have been in use for some years, all cargoes handled by them for the Army and the Navy, making such reportings on a separate report from any commercial cargoes, if any, which they handle. [99]

By making reportings in this manner it will en-

able the Association to keep track of the tonnage handled, and render tonnage assessments at the rates now in effect and established by the Coast Board, altho the rate set forth in the Army Contract does not coincide with the Association's tonnage assessment rate.

At the April 16th Meeting of the Board, a Committee was authorized to make a study and recommend to the Board the rate for tonnage assessments to be levied in connection with Army and Navy tonnage handled by Steamship Companies, or Contracting Stevedores, Members or Associate Members of this Association. However, until such time as the Board changes the Assessment rate, the base rate of $2\frac{1}{2}$ c per ton still prevails, and none other can be recognized until a change in the rate is made by the Board in conformity with the By-Laws of the Association.

Full circularization is being made to all Members and Associate Members in all ports, in order that there may be no misunderstanding, and all concerned are respectfully requested to promptly comply with the request outlined in this letter.

Yours very truly,

A. BOYD,

Secretary-Treasurer, Waterfront Employers Association of the Pacific Coast.

AB-ih

This is to certify that the foregoing is a true and correct copy of letter of April 27, 1942, from the Secretary-Treasurer of the Waterfront Employers Association of the Pacific Coast to its members.

[Seal]

A. BOYD,

Secretary.

12-3-43

Waterfront Employers Association of the Pacific Coast.

Exhibit 7

PLAINTIFF'S EXHIBIT 17

Admitted March 22, 1945

June 25, 1942

“Be It Resolved, That the Treasurer be authorized to advise the contracting stevedores and steamship companies doing stevedoring both of which are members of either Coast Association or one of the Port Associations, that the contracting stevedores or the steamship companies doing stevedoring of cargo for either the Army, Navy or WSA is obligated to report the tonnage so handled and pay the assessment to the Association in the same manner that non-member tonnage has been reported to the Association; and

“Be It Further Resolved, That the Board reaffirm the base rate of assessment as $2\frac{1}{2}c$ per ton now in force on commercial cargo.”

Exhibit D

PLAINTIFF'S EXHIBIT 18.

Admitted Mar. 22, 1945.

Phone Exbrook 3913

Waterfront Employers Association
of the Pacific Coast

San Francisco, Cal.

Financial Center Building

405 Montgomery Street

July 1, 1942

To Members:

Re: Tonnage Assessments Army, Navy and
War Shipping Administration.

On April 27th last, members were fully advised as to the procedure to be followed in reporting tonnage and collecting assessments dealing with Army and Navy cargoes and since that time contracts have been consummated with the War Shipping Administration, and the Board by resolution at its meeting of June 25th, authorized the Treasurer to advise all members as to method of reporting tonnage on any such cargoes and the payment of the assessment to the Association. The substance of the authorization was as follows:

That the contracting stevedores and steamship companies doing stevedoring, both of which are members of either the Coast Association or one of the Port Associations which handle cargoes for either the Army, Navy or the War Shipping Administration, is obligated to report the tonnage so handled and pay the assessment to the Waterfront Employers Association of the Pacific Coast or either

of the Port Associations in the same manner that non-member tonnage has been reported to the Association in the past.

The Board again reaffirmed its position that the base rate of assessment on all tonnage handled for either the Army, the Navy or the War Shipping Administration is $21\frac{1}{2}$ c per ton, the rate which is now in force on commercial cargoes.

Full circularization is being made of this material to all members and associate members in all Ports in order that there may be no misunderstanding, and all concerned are urgently requested to promptly comply with the procedure outlined in this letter and should any points not be clear to communicate with this office.

Very truly yours,

A. BOYD

Secretary-Treasurer.

Waterfront Employers Association of the Pacific Coast.

AB:IM

This is to certify that the attached is a true and correct copy of letter from the Secretary-Treasurer of the Waterfront Employers Association of the Pacific Coast to its members, dated July 1, 1942.

[Seal]

A. BOYD

Secretary

12-3-43

Waterfront Employers Association of the Pacific Coast.

Exhibit 8

PLAINTIFF'S EXHIBIT 19.

Admitted Mar. 22, 1945.

Letter of K. J. Middleton on behalf of plaintiff to the defendant, as follows:

“Griffiths & Sprague Steve. Co.,
Seattle, Wash.

October 27, 1942

Gentlemen:

The vexed question of tonnage assessments arising from some stevedore companies failing to remit the tonnage assessments on work done by them will be thoroughly discussed at a meeting to be held in San Francisco on November 11.

Stevedore associations of the Columbia River and Washington districts are invited to send representatives to that meeting.

The position of the Coast Association is that stevedores, by signed agreement, are obligated to pay assessments for non-member companies, and by resolutions of the Coast Board stevedores are held responsible for tonnage assessments on cargo handled by them for the Army and Navy.

In the San Francisco and San Pedro districts that position is accepted, and all stevedore companies are paying these assessments.

The position as developed is:

1—Much Army and Navy Work is concentrated

in Seattle; stevedores have not paid assessments, and in some cases, refuse to report tonnage.

2—The Coast Association has been supported by these tonnage assessments, and without them, cannot meet expenses.

3—We are confronted with the choice of finding income or have the Coast Association cease to exist.

4—If the Coast Association dies, its functions would have to be undertaken by individual or district groups. This is the opposite of the general trend. Other industries are finding it necessary to combine for the same reasons that impelled the Waterfront Employers to do so.

5—Machinery for collective bargaining affecting wages, working hours and rules, safety, labor relations committees, and representation on the Maritime Industry Board would remain a necessity; funds to support the Accident Prevention Bureau and help to maintain hiring halls (as required under the 1934 award) would have to be found. All of which would have to be done by individuals, or new machinery set up to replace the Coast Association and means of meeting expenses found.

It may be unnecessary to remind you of these details, but it seems advisable to emphasize the importance of the coming meeting and the gravity of the situation which confronts us. [103]

“It points the necessity for being fully prepared; and for bringing supporting facts and reasons to

any proposals which may be advanced by the stevedore associations.

If a continued refusal to support the Coast Association, what suggestions, if any, for a substitute, or for such activities as all concerned wish continued?

All of which again hangs on the question of payment of dues to support the expense. Essential to a critical examination of the possibilities is an accurate report of tonnage handled, as a guide for assessments.

In order to get the facts clearly in the open, I am instructed to ask you the specific questions:

(a)—Have you reported all the tonnage handled by you; If not, will you do so up to October 1, 1942, in advance of the meeting of November 11?

(b)—Have you paid tonnage assessments on cargo handled by you to October 1, 1942; if not, will you do so prior to the meeting of November 11?

An early reply will be appreciated and greatly help toward the conclusions we hope to reach at the coming meeting.

Yours very truly,

K. J. MIDDLETON."

Exhibit N

PLAINTIFF'S EXHIBIT 20.

Admitted Mar. 22, 1945.

Letter from the defendant to K. J. Middleton as follows:

“Griffiths & Sprague Stevedoring Company
Colman Building
Seattle, Washington

November 2, 1942.

Mr. K. J. Middleton
Waterfront Employers of Washington
Alaska Building
Seattle, Washington

Dear Sir:

We have for acknowledgment your letter of October 27th. We believe there should be a continuance of the Association and are prepared in a measure to support it. However, no doubt, this will be arrived at the meeting of November 11th in San Francisco.

As to the answers to the questions under Captions A and B in the latter part of your letter we have to advise that we have reported the tonnage on Army ships handled prior to October 1st, 1942, up to and including March, 1942 and we have paid the tonnage dues on Army cargo including October, 1941.

However, since that time this charge has been held in abeyance. The tonnage figures, in connection with Army cargo, has not been reported because of instructions to us that such information is confidential.

We await with interest the out-come of the November 11th meeting.

Yours very truly,

GRIFFITHS & SPRAGUE

STEVEDORING COMPANY

/s/ F. E. SETTERSTEN"

Exhibit O

PLAINTIFF'S EXHIBIT 21

Admitted Mar. 22, 1945.

November 11, 1942.

"Be It Resolved, That it be the order of this Board that all delinquencies covering tonnage assessments for Army and Navy cargo handled in the Puget Sound and Columbia River districts be paid up to date, and

"Be It Further Resolved, That the President appoint a committee to consider whether there should be a division in the Association's tonnage assessment of 2½c on Army and Navy cargo handled in Seattle and Navy cargo handled on the Columbia River between the Stevedore doing the work from the hold to ship's side or vice versa and the Stevedore doing the work between first or last place of rest and ship's side, and that if the said committee determines that there should be a split in the assessments between these two operations that it determine the split and make its recommendations back to this Board forthwith."

Amendment to the above Resolution adopted as follows:

“Be It Resolved, That the committee appointed in the main resolution be requested to explore and decide whether there should be a division of the Association’s tonnage assessments on all cargoes handled by stevedores, in addition to Army and Navy cargo in the Northwest as between hold and ship’s side and first or last place of rest and ship’s side and if the committee determines it should be a split that it report back to the Board its recommendations.”

Exhibit K

PLAINTIFF’S EXHIBIT 22.

Admitted Mar. 22, 1945.

November 12, 1942

“Be It Resolved, That the report of the special committee appointed by the Board of Directors to bring in a report and recommendation on tonnage assessments dated November 12th be accepted by this Board.”

The report of the Special Committee referred to is as follows:

“Minutes of Meeting of Special Committee Appointed by Board of Trustees to Bring in Report and Recommendation on Tonnage Assessments

1:00 p.m. November 12, 1942.

1. Payment of Tonnage Assessments to date.

Poll of members present as to whether or not they would pay resulted:

| | |
|-----------------|-------------------------|
| Matson—Yes | W. J. Jones |
| Pope-Talbot—Yes | by Roland Clapp—Yes |
| Spear—Yes | Griffiths & Sprague—No. |
| Luckenbach—Yes | |
| Associated—Yes | Portland—Are paying |
| Rothschilds—Yes | through Moore-McCor- |
| Olympic—Yes | mick |

2. Motion carried on Army and Navy work.

Tonnage assessment of 2½¢ on work exclusively for Army and Navy to be paid by stevedores.

3. Motion carried on War Shipping Administration work.

Tonnage assessments of 2½¢ to be paid by stevedores.

4. Discussion whether an additional charge against handling cargo from first place of rest to ship's sling or vice versa should be paid by members not now contributing. Chairman requested to put the idea before the Board.

Recommendation to the Board of Trustees that Northern Districts members be requested to forward to the Coast Board their recommendation as to above together with any other recommendation on dividing tonnage charges between dock operators and stevedores where possible.

/s/ K. J. MIDDLETON,

Chairman."

Exhibit L

PLAINTIFF'S EXHIBIT 23.

Admitted Mar. 22, 1945.

February 25, 1943.

1. The National Longshoremen's Board in 1934 awarded a contract to the Longshoremen's Union on a Coastwide basis.

The Waterfront Employers Association of the Pacific Coast was formed in 1937 to provide the means for collective bargaining and working under the Coastwide contract.

The Maritime Industry Board created in 1942 was given Coastwide jurisdiction.

Industry-wide Associations, more and more are coming into existence for collective bargaining and administering labor contracts.

Therefore:

Resolved that the Waterfront Employers Association of the Pacific Coast must be maintained intact and any tendency toward secession of any district resisted, in order to preserve the benefits of the thought and work expended in the formation and development of the Coast Association and to conserve the benefits which will inure on the return to commercial practice.

2. Whereas Messrs. Griffiths and Sprague, stevedores of Seattle, members of the Waterfront Employers of Washington refuse to conform to the resolutions of the Coast Board quoted below:

April 16, 1942——

“Be It Resolved, That the Treasurer of this Association be instructed to request all Member Companies and Contracting Stevedores, Members of the several port Associations, to regularly report at monthly intervals, all tonnage handled by them for the account of the Army and the Navy, and that reporting of such tonnage be immediately submitted of all tonnage in the past which has not been so reported to the Association, and

“Be It Further Resolved, That the Treasurer be authorized to outline to the Member Companies and Contracting Stevedores the manner of reporting Army and Navy tonnage to the Association.”

June 25, 1942:

“Be It Resolved, That the Treasurer be authorized to advise the contracting stevedores and steamship companies doing stevedoring both of which are members of either Coast Association or one of the Port Associations, that the contracting stevedores or the steamship companies doing stevedoring of cargo for either the Army, Navy or WSA is obligated to report the [108] tonnage so handled and pay the assessment to the Association in the same manner that non-member tonnage has been reported to the Association; and

“Be It Further Resolved, That the Board reaffirm the base rate of assessment as 21½¢ per ton now in force on commercial cargo.”

and have refused to pay any tonnage assessments

since September 30, 1941, or to report tonnage handled by them since March 31, 1942.

Therefore:

Resolved, That the matter be placed in the hands of the Coast Association's attorneys in Seattle to have papers prepared for entering suit against Messrs. Griffiths and Sprague to recover the amount owing by them.

Also, that Messrs. K. Colman and D. K. MacDonald, stockholders, and the officers of Messrs. Griffiths and Sprague Company be accorded the courtesy of advance notice of impending action.

3. Resolved, That a Committee of three principals, members of the Association go to Seattle to:

(a) Meet with the Board of Trustees of the Washington District to present the position of the Coast Board and enlist the support of the Washington Board in an effort to resolve this situation.

(b) If time and circumstance permit, to call on Messrs. Griffiths and Sprague to effect a method of payment with authority hereby given to the Committee to agree to any reasonable basis of deferred payments.

Resolved, That San Francisco Employers having agents in Seattle advise them fully of these proceedings with instructions to such who are members of the Washington Board of Trustees to attend any meeting called to consider this matter and vote to support the action of the Coast Board."

Exhibit 9

PLAINTIFF'S EXHIBIT 24.

Admitted Mar. 22, 1945.

Minutes of Meeting of Board of Trustees
Waterfront Employers of Washington

3:00 p.m.—March 10, 1943.

Present:

| | |
|------------------|------------------|
| E. C. Bentzen | C. B. Warren |
| H. W. Burchard | F. E. Settersten |
| R. C. Clapp | W. J. Bush |
| H. E. Rhoda | T. James |
| L. J. Rogers | J. A. Lunny |
| Wm. Semar | W. T. Sexton |
| Sam Stocking | Lawrence Bogle |
| R. A. Tinling | K. J. Middleton |
| W. D. Vanderbilt | M. G. Ringenberg |

Purposes—Discussion of delinquency of Messrs. Griffiths and Sprague and other members of the Association in the matter of tonnage assessments due to the Waterfront Employers Association of the Pacific Coast for work done by them for the U. S. Army and Navy.

Mr. Middleton presided and outlined his recent visit to San Francisco which resulted in a committee of four principals, now present, coming from San Francisco with the purpose of trying effect a settlement of these delinquencies without having recourse to law.

Members of the San Francisco committee next spoke reciting negotiations and meetings held in other ports, explained the situation in San Fran-

cisco; the particular arrangement with the U. S. Army there which does not involve contracting stevedores, the Navy contracts, and the general result that the tonnage tax is being paid in all ports other than Washington District.

The committee hoped to convince the delinquents of their responsibility, said that no retroactive compromise could be accepted, [110] and if not successful lawsuits would be commenced.

The discussion throughout was friendly.

The meeting recessed to allow the San Francisco Committee to meet with Messrs. Griffiths and Sprague.

4:00 p.m. meeting resumed with Messrs. Settersten and Hay present.

Mr. Hay stated that after discussion with the committee his client felt they had a moral obligation to pay. After some discussion Mr. Hay submitted the following written statement:

“Mr. Hay stated on behalf of his client, Griffiths and Sprague Stevedoring Company, that his principals had met with the committee from San Francisco and had ironed out with them certain matters which had been misunderstood or in dispute, and that his client felt that, having accepted benefits of the Coast Association there was a moral obligation to pay for such benefits, that the matter of legal liability was waived, and that his client would pay back assessments of 21½¢ a ton, and future assessments made by the Coast Association, method of

payment to be arrived at with the San Francisco committee following adjournment of this meeting."

The memorandum referred to in the above statement was drafted subsequently in the form of a letter and signed by Mr. Hay as secretary of Griffiths and Sprague Stevedoring Co., it reads:

"To the Committee from

Waterfront Employers Ass'n. of the Pacific Coast
Alaska Building
Seattle, Washington.

"Gentlemen:

"This is to advise you that on the tonnage handled by us for the U. S. Army up until January 31, 1943, upon which no tonnage assessment has been paid, we will pay the Waterfront Employers Association of the Pacific Coast the tonnage assessment of 21½c per ton on a volume of tonnage to be determined; payment to be made in approximately equal installments of thirty, sixty and ninety days from this date. [111]

"Also from February 1, 1943 onward, we will pay the tonnage assessments currently at the rate set by the Coast Association.

Very truly yours,

GRIFFITHS & SPRAGUE

STEVEDORING COMPANY

By M. E. HAY,

Secretary"

Mr. Settersten moved, Mr. Clapp seconded:

"That the matter of the local assessment of 1%

be levied by the Finance Committee with a view to reductions if possible." Carried.

Mr. Clapp moved, Mr. Semar seconded:

"Moved that a committee to be named by the Waterfront Employers of Washington will present proposal to the San Francisco committee, present at this meeting, outlining the position that there are interests within the industry who are enjoying all the benefits of the Coast Association without making any monetary contribution to cover. The individual members of the California committee have agreed that they would sympathetically and energetically present the picture to the Coast Association with a view to correcting the situation." Carried.

Committee appointed:

R. C. Clapp, Chairman, F. E. Settersten, Sam Stocking, Wm. Semar.

Mr. Vanderbilt remarked that we have allowed delinquencies to run too long and suggested a limit of 60 days' delay, thereafter delinquents to be dealt with legally.

The chairman and each of the members of the San Francisco Committee expressed gratification for the settlement of this vexed question, the committee feeling it was a happy outcome of their visit.

Mention was made of other delinquents, viz Western Stevedore Co., [112] and stevedores at Everett, Bellingham and Grays Harbor, with comment that these too must be settled or action taken.

Meeting adjourned at 4:50 p.m.

Secretary.

President. [113]

PLAINTIFF'S EXHIBIT 25.

Admitted Mar. 22, 1945.

March 11, 1943.

To the Committee from
Waterfront Employers Ass'n. of the Pacific Coast
Alaska Building
Seattle, Washintgon.

Gentlemen:

This is to advise you that on the tonnage handled by us for the U.S. Army up until January 31, 1943, upon which no tonnage assessment has been paid, we will pay the Waterfront Employers Association of the Pacific Coast the tonnage assessment of $2\frac{1}{2}c$ per ton on a volume of tonnage to be determined; payment to be made in approximately equal installments of thirty, sixty and ninety days from this date.

Also from February 1, 1943 onward, we will pay

the tonnage assessments currently at the rate set by the Coast Association.

Very truly yours,

GRIFFITHS & SPRAGUE
STEVEDORING COMPANY

By M. E. HAY,
Secretary. [114]

PLAINTIFF'S EXHIBIT 30

Admitted Mar. 22, 1945.

Tonnage Reported to Waterfront Employers of Washington
on War Shipping Administration Ships

| | | | | | | Payments |
|------------------|------------|--------|-----------|----------|--|----------|
| Year 1942 | 31848 Tons | at 2½c | \$ 796.21 | 9/16/42 | | 29.58 |
| (March-December) | | | | 3/4/43 | | 409.88 |
| | | | | " | | 249.95 |
| | | | | 12/13/43 | | 106.80 |
| | | | | | | <hr/> |
| | | | | | | 796.21 |
| Year 1943 | 62464 Tons | at 2½c | 1561.61 | 3/5/43 | | 403.43 |
| | | | | 3/17/43 | | 97.75 |
| | | | | 12/13/43 | | 174.53 |
| | | | | 12/13/43 | | 77.05 |
| | | | | 12/13/43 | | 236.85 |
| | | | | " | | 200.42 |
| | | | | " | | 112.00 |
| | | | | 12/24/43 | | 95.85 |
| | | | | 1/22/44 | | 39.03 |
| | | | | 1/25/44 | | 124.70 |
| | | | | | | <hr/> |
| | | | | | | 1561.61 |
| Year 1944 | 6111 Tons | at 2½c | 152.78 | 1/15/44 | | 70.55 |
| (Thru August) | | | | 3/16/44 | | 46.73 |
| | | | | 6/27/44 | | 35.50 |
| | | | | | | <hr/> |
| | | | | | | 152.78 |

Exhibit "B"

PLAINTIFF'S EXHIBIT 31

Admitted Mar. 22, 1945.

Tonnage Reported on United States Army Cargo From
March 1, 1942 to December 31, 1942, inclusive

| Date of Payment | Amount Paid at 21½¢ Per Ton |
|----------------------|-----------------------------|
| March 22, 1943 | \$ 755.50 |
| May 18, 1943 | 773.45 |
| " " " | 1,152.48 |
| " " " | 1,495.03 |
| " " " | 2,066.23 |
| " " " | 2,475.28 |
| " " " | 2,513.65 |
| Nov. 23, 1943 | 2,786.00 |
| " " " | 1,562.10 |
| " " " | 2,290.73 |
| Exhibit "C" | |

PLAINTIFF'S EXHIBIT 32.

Admitted Mar. 23, 1945.

Minutes of Joint Meeting of Committee of Seattle
and San Francisco Representatives Regarding
Assessments.

May 26, 1943—10:00 a.m.

Room 308—Financial Center Building
405 Montgomery Street,
San Francisco, California

Present:

San Francisco Representatives:

Messrs. T. C. Greene, Tom James, W. J. Bush,
E. N. W. Hunter, W. T. Sexton.

Seattle Representatives:

Messrs. Sam Stocking, Roland Clapp, Bud
Weber, Lawrence Bogle.

Portland Representatives:

Messrs. A. J. Chalmers, C. W. Spear.

Outport Representatives:

Messrs. Frank Hill (Washington), Frank Shaw (Oregon).

Also Present:

F. P. Foisie, K. J. Middleton, Gregory A. Harrison, A. Boyd, A. E. Mills, M. G. Ringenberg, E. S. Coates, E. J. Baird. [117]

Mr. Foisie announced that this meeting had been called to discuss with the Seattle representatives the exchange of proposals between the Seattle and San Francisco Committees regarding collection of Tonnage Assessments and that representatives from Portland were invited to sit in.

Mr. Bogle, acting as spokesman for the Seattle Committee, stated a new proposal had been made, which last night had been endorsed by the Portland Committee.

The proposal would put all assessments on a man-hour basis and instead of placing responsibility on the Contracting Stevedore for payment of Tonnage Assessments to the Coast Association that the local Port Association would collect a man-hour charge from all employers using men out of the Hiring Hall; that out of this fund the Tonnage Assessment would be paid to the Coast Association by the Port Association.

Mr. Stocking, speaking for Terminal Operators in the Northwest, pointed out that terminal operators and the Port Authorities were paying nothing

in support of the Coast Association although using men out of the Hiring Halls. He stated that the Terminal Operators and the Port Authorities were agreeable to paying something if a policy was adopted where all pay who use men out of the Hall. He urged that such a policy should have direct Coast Association backing to become effective.

Mr. Frank Hill—Approved payment of 2½¢ a ton, the Coast Association Assessment, but stated that the Port Authorities in Grays Harbor and Olympia would not be willing to pay a man-hour charge such as proposed. [118]

After further discussion, upon a motion duly made and seconded, the following was adopted:

It is agreed that the Seattle and Portland representatives, together with Mr. Bogle and Mr. Harrison, meet at 2:00 p.m. today to draft the assessment proposal discussed at this meeting and submit to this Committee at 2:30 p.m. today for discussion before final submission to the Coast Board tomorrow, May 27, 1943.

The Meeting adjourned at 12 noon and reconvened at 2:30 p.m., at which time the Special Committee's Report was read (Copy attached and made part of these Minutes).

Upon motion of Mr. Stocking, seconded by Mr. James, it was agreed to submit the Committee's report to the Coast Board tomorrow.

Meeting adjourned at 3:45 p.m.

/s/ A. BOYD,
Secretary.

This is to certify that I have careful compared the transcript, to which this certificate is attached, with the record on file in this office of which it purports to be a copy, and that the same is a full, true and correct copy thereof.

A. BOYD,

Secretary-Treasurer

Waterfront Employers Association of the Pacific Coast.

Dated at San Francisco this 10 day of August, 1944. [119]

May 26, 1943.

A joint committee of the Waterfront Employers Association of the Pacific Coast, Waterfront Employers of Washington and Waterfront Employers of Portland having met to consider measures to satisfy parties in interest in respect to future payment of tonnage assessments owing by the member companies to the Coast Association recommend the following:

1. All members of the Coast Association who are employers of longshore labor will continue to be directly responsible for the tonnage assessment as set by the Coast Association;

2. The Washington and Portland Associations will take the appropriate action including any necessary changes in the Articles and By-Laws and any necessary resolutions to impose an assessment upon their respective members at a specified rate per man-hour for all labor subject to the jurisdiction of the local Association;

3. The Washington and Portland Associations propose to use funds collected in the manner aforesaid for the purpose of paying on behalf of their respective members the tonnage assessments owing by them to the Coast Association;

4. In the event that member companies of the Washington or Portland Associations shall fail or decline to pay their local man-hour and also fail to pay tonnage assessments to the Coast Association they will be in default to both the local and Coast Associations which will act in concert for [120] the purpose of compelling them to abide by their obligations either by appropriate legal proceedings or such action in respect to their member companies as shall seem desirable.

The Coast Association is expected to lend its full cooperation and aid to the end that all users of longshore labor in the Washington and Oregon areas shall contribute on a man-hour basis to the local Associations for all such labor used.

This is to certify that I have carefully compared the transcript, to which this certificate is attached, with the record on file in this office of which it purports to be a copy, and that the same is a full, true and correct copy thereof.

A. BOYD,

Secretary-Treasurer

Waterfront Employers Association of the Pacific Coast.

Dated at San Francisco this 10 day of August 1944. [121]

PLAINTIFF'S EXHIBIT 33.

Admitted Mar. 23, 1945.

Excerpt from Minutes of Meeting of the Board of
Directors of the Waterfront Employers Asso-
ciation of the Pacific Coast.

May 27, 1943—2:10 p.m.

Room 308—Financial Center Building
405 Montgomery Street
San Francisco, California

Present:

Messrs. Ralph Myers, H. C. Ewing, F. L. Doelker,
A. E. Stow, Lawrence Bogle, E. N. W. Hunter,
Geo. Schirmer, Chas. W. Spear, A. J. Chalmers,
Sam Stocking, A. E. Mills, Tom James, Nick Miller,
R. C. Clapp, W. J. Bush, M. J. Weber, W. D.
Clark, Fred Hooper, Joe Banning, C. T. Tilley,
Frank Shaw, Frank Hill.

Also Present:

Messrs. F. P. Foisie, K. J. Middleton, Gregory
A. Harrison, F. C. Gregory, J. B. Bryan, M. G.
Ringenberg, E. S. Coates, E. J. Baird.

Purpose of Meeting

Election of Officers.

Proposed changes in Assessments in Washington
and Oregon.

Reports from Ports.

Northwest Assessments.

The report of the Joint Committee regarding col-
lection of assessments was read, copy of which is

attached and made a part of these Minutes. (See Minutes of Committee of May 26th and copy.) [122]

Upon motion of Mr. James, seconded by Mr. Doelker, the following Resolution was unanimously adopted:

Be It Resolved, That the Committee's report on collection of man-hour charges to satisfy Coast tonnage assessments in the Washington and Oregon areas be adopted.

Outport Conditions.

Both Mr. Shaw for Oregon Outports and Mr. Hill for Washington Outports, presented their positions and asked for relief from paying assessments—both Mr. Shaw's and Mr. Hill's statements are attached and made a part of these Minutes.

No official action was taken regarding these petitions.

Meeting adjourned at 3:05 p.m.

/s/ A. BOYD,
Secretary.

This is to certify that I have carefully compared the transcript, to which this certificate is attached, with the record on file in this office of which it purports to be a copy, and that the same is a full, true and correct copy thereof.

A. BOYD,

Secretary-Treasurer

Waterfront Employers Association of the Pacific Coast.

Dated at San Francisco this 10 day of August 1944. [123]

PLAINTIFF'S EXHIBIT 34.

Admitted Mar. 22, 1945.

Agreement Between

DISTRICT No. 1 OF THE INTERNATIONAL
LONGSHOREMEN'S AND WAREHOUSE-
MEN'S UNION

and

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST

On Behalf of:

WATERFRONT EMPLOYERS OF WASHING-
TON, WATERFRONT EMPLOYERS OF
PORTLAND, WATERFRONT EMPLOY-
ERS ASSOCIATION OF SAN FRAN-
CISCO, WATERFRONT EMPLOYERS
ASSOCIATION OF SOUTHERN CALI-
FORNIA.

Effective December 20, 1940. [124]

AGREEMENT

This Agreement by and between the International Longshoremen's and Warehousemen's Union, District No. 1, hereinafter designated as the Union, and the Waterfront Employers Association of the Pacific Coast on behalf of the Waterfront Employers of Washington, Waterfront Employers of Portland, Waterfront Employers Association of San Francisco and Waterfront Employers Associa-

Plaintiff's Exhibit 34—(Continued)
tion of Southern California, hereinafter designated
as the Employers:

WITNESSETH

The award of the National Longshoremen's Board dated October 12, 1934, as amended by agreements of February 4, 1937, July 15, 1938 and October 1, 1938, as interpreted by arbitrators in awards rendered thereunder, is hereby extended and renewed in form so amended as to read in the manner hereafter set forth. Said amended agreement shall become effective on the date hereof, and remain in effect until September 30, 1942, and shall be deemed renewed thereafter from year to year unless either party gives written notice to the other of a desire to modify or terminate the same, said notice to be given at least sixty (60) days prior to the expiration date. Negotiations shall commence within ten (10) days after the giving of such notice. [125]

Section 1.

The provisions of this agreement shall apply to all handling of cargo in its transfer from vessel to first place of rest, and vice versa, including sorting and piling of cargo on the dock, and the direct transfer of cargo from vessel to railroad car or barge, and vice versa, when such work is performed by employees of the companies parties to this agreement.

It is agreed and understood that if the employers,

Plaintiff's Exhibit 34—(Continued)

parties to this agreement shall sub-contract work as defined herein, provisions shall be made for the observance of this agreement.

The following occupations shall be included under the scope of this agreement: Longshoremen, gang bosses, hatch tenders, winch drivers, donkey drivers, boom men, burton men, sack turners, side runners, front men, jitney drivers, lift jitney drivers, and any other person doing longshore work as defined in this section.

Section 2.

Six hours shall constitute a day's work. Thirty hours shall constitute a week's work, averaged over a period of four weeks. The first six hours worked between the hours of 8 a.m. and 5 p.m. shall be designated as straight time, but there shall be no relief of gangs before 5 p.m. All work in excess of six hours between the hours of 8 a.m. and 5 p.m. and all work during meal time and between 5 p.m. and 8 a.m. on [126] weeks days and from 5 p.m. on Saturday to 8 a.m. on Monday, and all work on legal holidays, shall be designated as overtime. Meal time shall be any one hour between 11 a.m. and 1 p.m. When men are required to work more than five consecutive hours without an opportunity to eat, they shall be paid time and one-half of the straight or overtime rate, as the case may be, for all time worked in excess of five hours without a meal hour.

Plaintiff's Exhibit 34—(Continued)

Section 3.

(a) The basic rate of pay for longshore work shall not be less than Ninety-five cents (95c) per hour for straight time, nor less than one dollar and forty cents (\$1.40) per hour for overtime, provided, however, that for work which is now paid higher than the present basic rates, the differentials above the present basic rates shall be added to the basic rates established in this paragraph. Wage rates specified in this paragraph shall be subject to review at the time and in the manner hereinafter set forth.

(b) In addition to the basic wages for longshore work as provided in Section 3 (a), additional wages to be called penalties shall be paid for the types of cargo, condition of cargoes, or working conditions specified below.

The penalty rates hereinafter set forth shall be the only penalty cargo rates payable and none of such penalty cargo rates shall hereafter be subject to alteration or amendment except by agreement of all of the parties hereto.

Penalty cargo rates shall apply to all members of the longshore gang, including dockmen, except where herein otherwise [127] specified. Where differentials are now paid for skill, penalty cargo rates shall not be pyramided thereon. Where the cargo penalty rate herein is higher than the skilled rate paid to any member of the gang, such member

Plaintiff's Exhibit 34—(Continued)

shall receive the cargo penalty rate less the allowance which he is receiving for skill.

Present port practices shall be continued in the payment of penalties to gang bosses, if they are employed.

Where two penalties might apply the higher penalty shall apply and in no case shall more than one penalty be paid.

Penalty Cargo Rates

| Commodities and Conditions of Work | Penalty Rate |
|---|--------------|
| For shovelling all commodities except on commodities earning higher rate, | |
| Straight time, per hour | 20c |
| Overtime, per hour | 30c |
| To Boardmen stowing bulk grain: | |
| Straight time, per hour | 30c |
| Overtime, per hour | 30c |
| For handling bulk sulphur, soda ash and crude untreated potash: | |
| Straight time, per hour | 45c |
| Overtime, per hour | 45c |
| Untreated or offensive bones in bulk: | |
| Straight time, per hour | 75c |
| Overtime, per hour | 30c |
| For handling phosphate rock in bulk: | |
| Straight time, per hour | 30c |
| Overtime, per hour | 30c |

Plaintiff's Exhibit 34—(Continued)

Penalty
Rate

When handling the following commodities in lots of 25 tons or more a penalty for both straight and overtime work in addition to the basic rate shall be 10c per hour:

| | |
|-------------------------------|-----|
| Straight time, per hour | 10c |
| Overtime, per hour | 10c |

Alfalfa Meal. Untreated or offensive bones in sacks. Caustic soda in drums. Celite and decolite in sacks. Coal in sacks.

Cement:

- (a) All discharging from ships.
- (b) Loading only when in bags with no inner containers, unless the cargo falls within the provision relating to damaged cargo.

Creosote, when not crated. Creosote Wood Products unless boxed or crated.

Following fertilizers in bags:

Tankage, animal, fish, fishmeal, guano, blood meal and bone meal.

Glass, broken, in sacks. Green Hides. Herring, in boxes and barrels; Lime, in barrels and loose mesh sacks.

Plaintiff's Exhibit 34—(Continued)

Penalty
Rate

Lumber products loaded out of water, including that part of cribs only which has been submerged.

Meat Scraps, in sacks. Nitrates, crude untreated, in sacks. Ore, in sacks. Phosphates, crude, untreated, in sacks. Plaster, in sacks without inner containers.

Refrigerated Cargo: Handling and stowing refrigerator space meats, fowl and other similar cargoes to be transported at temperatures of freezing or below in the boxes. [129]

Sacks: Loading only and to apply to the entire loading operation where table or chutes are used and the men are handling sacks weighting 120# or over on the basis of one man per sack.

Salt Blocks in sacks.

Scrap metal in bulk and bales, excluding rails, plates, drums, car wheels and axles.

Soda Ash in bags.

When the following cargoes are leaking or sifting because of damage or

Plaintiff's Exhibit 34—(Continued)

Penalty
Rate

faulty containers, a penalty of 10c per hour shall be paid:

| | |
|-------------------------------|-----|
| Straight time, per hour | 10c |
| Overtime, per hour | 10c |

Analine Dyes.

Fish Oil, whale oil and oriental oils, in drums, barrels or cases.

Lamp Black.

Penalties to Certain Gang Members:

To winch drivers, hatch tenders, side runners, burton men, donkey drivers, stowing machine drivers and boom men only:

Handling lumber and logs out of water:

| | |
|-------------------------------|-----|
| Straight time, per hour | 20c |
| Overtime, per hour | 20c |

To Boom Men only:

Handling creosoted products out of water

| | |
|-------------------------------|-----|
| Straight time, per hour | 30c |
| Overtime, per hour | 30c |

To Hold Men only:

All paper and pulp in packages weighing 300 lbs. or over per package, only when winging up, and when stowing in

Plaintiff's Exhibit 34—(Continued)

Penalty
Rate

fore peaks, after peaks and special compartments other than regular cargo spaces. (This does not apply to rolls)

Straight time, per hour 10c

Overtime, per hour 10c

To Hold Men only:

Head Room: When there is less than 6 ft. of head room——

(a) Loading cargo in hold on top of bulk grain.

(b) Covering logs or piling with lumber products.

Straight time, per hour 10c

Overtime, per hour 10c

Penalties for Special Conditions of
Work:

Damaged Cargo: Cargo badly damaged by fire, collision, springing a leak or stranding, for that part of cargo only which is in a badly damaged or offensive condition:

Straight time, per hour 55c

Overtime, per hour 10c

Cargo damaged from causes other than those enumerated above, shall, if inspection warrants, pay the damaged cargo rate or such other rate as determined by the Port Labor Relations Committee for

Plaintiff's Exhibit 34—(Continued)

Penalty
Rate

handling that part of the cargo only which is in a badly damaged or offensive condition. This provision shall apply only to individual consignments which are damaged and shall not empower any committee to add to or detract from the penalty cargo rates herein specified.

Explosives: When working explosives, as defined by current Western Classification Rules, all men working ship and barge to receive:

| | |
|-------------------------------|-----|
| Straight time, per hour | 45c |
| Overtime, per hour | |

Fire: When fire is burning or cargo smouldering in a hatch, the gang working the hatch to receive:

| | |
|-------------------------------|--------|
| Straight time, per hour | \$1.15 |
| Overtime, per hour | 70c |

Section 4.

The hiring of all longshoremen shall be through halls maintained and operated jointly by the International Longshoremen's and Warehousemen's Union, Pacific Coast District Number One, and the respective employer's associations. The hiring and dispatching of all longshoremen shall be done through one central hiring hall in each of the ports of Seattle, Portland, San Francisco and Los An-

Plaintiff's Exhibit 34—(Continued)

geles, with such branch halls as the Labor Relations Committee, provided for in Section 9, shall decide. All expense of the hiring halls shall be borne one-half by the International Longshoremen's and Warehousemen's Union and one-half by the employers. Each longshoreman registered at any hiring hall who is not a member of the International Longshoremen's and Warehousemen's Union shall pay to the Labor Relations Committee toward the support of the hall a sum equal to the pro rata share of the expense of the support of the hall paid by each member of the International Longshoremen's and Warehousemen's Union. [132]

Section 5.

The personnel for each hiring hall shall be determined and appointed by the Labor Relations Committee for the port, except that the dispatcher shall be selected by the International Longshoremen's and Warehousemen's Union.

Section 6.

Preference of employment shall be given to members of Pacific Coast District International Longshoremen's and Warehousemen's Union whenever available. This section shall not deprive the employers' members of the Labor Relations Committee of the right to object to unsatisfactory men (giving reasons therefor) in making additions to the registration list, and shall not interfere with the making of appropriate dispatching rules.

Plaintiff's Exhibit 34—(Continued)

Section 7.

(a) The following holidays shall be recognized: New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Armistice Day, Thanksgiving Day, General Election Day, Christmas Day, or any other legal holiday that may be proclaimed by state or national authority. When a holiday falls on Sunday the following Monday shall be observed as a holiday.

(b) Election Day. On election day the work shall be so arranged as to enable the men to vote.

Section 8.

The hiring and dispatching of longshoremen in all ports covered by this award other than those mentioned in Section 4, and excepting Tacoma, shall be done as provided for the ports mentioned in Section 4; unless the Labor Relations Committee in any of such ports establishes other methods of hiring [133] or dispatching.

Section 9.

The parties shall immediately establish and maintain during the existence of this agreement a Coast Labor Relations Committee of six members, three to be designated by the employers and three by the union. There shall also be established and maintained throughout the existence of this agreement a Port Labor Relations Committee for each

Plaintiff's Exhibit 34—(Continued)

port affected by this agreement, composed of three representatives designated by the employer's association of the port and three to be designated by the local union. By mutual consent any Labor Relations Committee may change the number of representatives of the respective parties. Any Coast or Port Labor Relations Committee shall meet promptly at the request of either party.

The Coast Labor Relations Committee shall have power and jurisdiction to determine any question involving the interpretation of this agreement and to decide any dispute arising thereunder. The Coast Labor Relations Committee shall have power to set aside any decision or other action of any Port Labor Relations Committee and shall have the power and duty to establish uniform coast working and dispatching rules for any or all of the ports affected hereby and to interpret and apply the same.

The parties shall endeavor to agree upon a Coast Arbitrator; if they cannot so agree, the Secretary of Labor or any person authorized by the Secretary shall, at the request of either party, appoint one Coast Arbitrator. Before making such appointment, the Secretary of Labor shall be requested to confer with the [134] parties. If the Coast Arbitrator shall at any time be unable or refuse or fail to act or shall resign, then at the request of either party the Secretary of Labor shall promptly appoint his successor or substitute.

Plaintiff's Exhibit 34—(Continued)

The parties, or, at the request of either of them, the Coast Arbitrator, shall select Arbitrator's Agents, one for each of the four districts of Puget Sound, Columbia River, Northern California and Southern California. All expenses of the Coast Arbitrator and of the Arbitrator's Agents and their respective compensations or salaries shall be equally borne by the parties. Each of the Arbitrator's Agents shall at all times function under and in accordance with the decisions and directions of the Coast Arbitrator. Both the Coast Arbitrator and the Arbitrator's Agents shall at all times be available for the performance of their respective functions and duties under the provisions of this agreement.

In the event that any Port Labor Relations Committee shall fail to agree on any question before it, it shall be immediately referred at the request of either party to the Coast Labor Relations Committee for decision. In the event that the Coast Labor Relations Committee fails to agree on any question involving the interpretation of this agreement or any dispute arising hereunder, or upon any other question of mutual concern not covered by this contract and relating to the industry, such question shall, at the request of either party, be referred to the Coast Arbitrator for decision. [135]

The Coast Arbitrator shall have power to hear and determine any complaint of either party concerning alleged violations of the provisions of this

Plaintiff's Exhibit 34—(Continued)

agreement and shall have power to finally and conclusively determine the same.

All meetings of the Coast Labor Relations Committee and all arbitration proceedings before the Coast Arbitrator shall be held in the City and County of San Francisco, State of California, unless the parties shall otherwise stipulate in writing. All decisions of the Coast Arbitrator shall be given in duplicate and shall be in writing signed by the Arbitrator and shall be delivered to the respective parties.

Nothing in this section shall prevent the parties from agreeing upon other means of deciding matters upon which there has been disagreement.

The Coast Arbitrator shall have power to delegate to the Arbitrator's Agents the power to hear and determine disputes arising under the contract of a local significance or character, and in such case the action of the Coast Arbitrator in delegating such authority shall be conclusive upon all parties. Arbitration proceedings before any Arbitrator's Agent shall be conducted in the same manner as proceedings before the Coast Arbitrator.

All decisions of the Coast Arbitrator and of the Arbitrator's Agents shall be final and binding upon all parties. [136]

Section 10.

Subject to the control and direction of the Coast

Plaintiff's Exhibit 34—(Continued)

Labor Relations Committee, the duties of the Port Labor Relations Committee shall be:

- (a) To maintain and operate the hiring hall;
- (b) To have complete control of the registration list of the regular longshoremen of the Port including the power to make such additional registrations of the longshoremen as may be necessary, no longshoremen not on such a list shall be dispatched from the hiring hall or employed by any employer while there is any man on the registered list qualified, ready and willing to do the work;
- (c) To decide questions regarding rotation of gangs and extra men; revision of existing lists of extra men and of casuals; and the addition of new men to the industry when needed;
- (d) To investigate and adjudicate all grievances and disputes relating to working agreements;
- (e) To decide all grievances relating to discharges. The hearing and investigation of grievances relating to discharges shall be given preference over all other business before the Committee. In case of discharge without sufficient cause, the Committee may order payment for lost time or reinstatement with or without payment for lost time;
- (f) To decide any other question of mutual concern relating to the industry and not covered by this agreement.

Plaintiff's Exhibit 34—(Continued)

Section 11.

(a) Subject to the control and direction of the Coast Labor Relations Committee, the Labor Relations Committee for each port shall determine the organization of gangs and methods [137] of dispatching. Subject to this provision and to the limitations of hours fixed in this agreement, the employers shall have the right to have dispatched to them, when available, the gangs in their opinion best qualified to do their work. Subject to the foregoing provisions gangs and men not assigned to gangs shall be so dispatched as to equalize their work opportunities as nearly as practicable, having regard to their qualifications for the work they are required to do. The Employers shall be free to select their men within those eligible under the policies jointly determined, and the men likewise shall be free to select their jobs.

(b) The longshoremen shall perform work as ordered by the employer in accordance with the provisions of this agreement. If a dispute arises concerning the manner in which work shall be carried on it shall continue in accordance with the orders of the employer, except in those cases where the longshoremen in good faith believe that to do is to immediately endanger the health and safety of the men. In all such cases the Arbitrator's Agent for the District shall be immediately summoned and shall forthwith determine the manner in which work shall be performed thereafter pend-

Plaintiff's Exhibit 34—(Continued)

ing settlement of the dispute. Any order of the Arbitrator's Agent relative to the manner in which work shall be carried on shall be binding on both parties [138] and shall be immediately complied with.

(c) The Employers shall have the right to discharge any man for incompetence, insubordination or failure to perform the work as required in conformance with the provisions of this agreement. If any man feels that he has been unjustly discharged or dealt with, his grievance shall be taken up as provided in Section 10.

(d) It is agreed that the employers shall be free so far as they desire to do so to place into immediate use all labor saving devices and labor saving equipment; and the employers shall at all times in the future be free, without interference from the union or its members, to introduce such labor saving devices and to institute such methods of loading and discharging cargo as they consider to be the best conduct of their business, provided such methods of discharging and loading are not inimical to the safety or health of the employees.

If at any time the union shall notify the employers that it contends that earnings of Registered Longshoremen and their employment have suffered materially from the introduction and use of labor saving devices and methods in addition to those already used and practiced in the past, then it is agreed that proposals relative to the

Plaintiff's Exhibit 34—(Continued)

conditions under which labor saving devices and practices shall be continued will be a proper and [139] appropriate subject for negotiation and if the parties cannot agree for arbitration before the Coast Arbitrator, upon the establishment that there is reasonable compliance with this agreement and that the following conditions then exist:

(a) That the use of labor saving devices has been materially increased beyond the uses heretofore practiced;

(b) That such increased use has materially and adversely affected the earnings and employment of Registered Longshoremen on the Pacific Coast;

(c) That the union and its members have not interfered with and are not interfering with the introduction of labor saving devices by the employers:

(d) That efficiency in longshore work has been materially improved as a result of such use.

(e) All members of the Union shall perform their work conscientiously and with sobriety and with due regard to their own interests shall not disregard the interests of their employers. Any member of the Union who is guilty of deliberate bad conduct in connection with his work as a longshoreman or through illegal stoppage of work shall cause the delay of any vessel shall be fined, suspended or for deliberate repeated offenses expelled from the Union. Any employer may file with the

Plaintiff's Exhibit 34—(Continued)

Union a complaint against any member of the Union, and the Union shall act thereon and notify the Labor Relations Committee of its decision within ten (10) days from the date of receipt of the complaint. [140]

After the expiration of ninety (90) days from this date, if the employers are dissatisfied with the disciplinary action taken under the foregoing paragraph, then the following independent procedure may be followed:

The Port Labor Relations Committee shall have the power and duty to impose penalties on longshoremen who will be found guilty of stoppages of work, refusal to work cargo in accordance with the provisions of this agreement, or shall leave the job before relief is provided, or who shall be found guilty of pilfering or broaching cargo, or be found guilty of drunkenness, or shall in any other manner violate the provisions of this agreement or any award or decision of an arbitrator or arbitrator's agents. If any Port Labor Relations Committee shall fail to agree upon the imposition of a penalty, or the adequacy thereof, the matter shall then go before the Coast Labor Relations Committee, and if it cannot agree, the Coast Arbitrator for decision.

(f) Promptly on the execution of this agreement, the Coast Labor Relations Committee shall establish basic Coast standard dispatching and working rules as far as practicable; in the event that Committee is unable to agree upon any of the

Plaintiff's Exhibit 34—(Continued)

matters set forth in this section, the matter shall be referred to the Coast Arbitrator for decision, at the request of either party. All local port dispatching, working and safety rules in effect at this time shall continue in effect until changed or superseded in accordance with the terms of this agreement.

(g) The employers shall provide safe gear and safe working conditions. A safety code for longshore work shall be negotiated by the parties and if they shall not agree, it shall be arbitrated only by mutual consent.

(h) Loads for commodities covered herein handled by longshoremen shall be of such size as the employer shall direct, within the maximum limits hereinafter specified, and no employer after such date shall direct and no longshoremen shall be required to handle loads in excess of those hereinafter stated. The following standard maximum sling loads are hereby adopted:

(1) Canned Goods:

| | |
|------------------------------|------------------------|
| 24—21½ talls, 6—12s tall and | |
| 48—1 talls (including | |
| salmon) | 35 cases to sling load |
| or | |

when loads are built of

| | |
|----------------------------------|------------------------|
| 3 tiers of 12..... | 36 cases to sling load |
| 24—1 talls | 60 cases to sling load |
| 24—2's talls..... | 50 cases to sling load |
| 6—10's talls | 40 cases to sling load |
| Miscellaneous cans and jars..... | Maximum 2100 lbs. |

Plaintiff's Exhibit 34—(Continued)

(2) Dried Fruits and Raisins—(Gross Weight):

| | |
|-------------------|------------------------|
| 22 to 31 lbs..... | 72 cases to sling load |
| 32 to 39 lbs..... | 60 cases to sling load |
| 40 to 50 lbs..... | 40 cases to sling load |
| 24—2 lbs. | 35 cases to sling load |
| 48—16 oz. | 40 cases to sling load |

(3) Fresh Fruit—Standard Boxes:

| | |
|-------------------------|------------------------|
| Oranges, Standard | 27 boxes to sling load |
| Oranges, Maximum..... | 28 boxes to sling load |
| Apples and Pears..... | 40 boxes to sling load |

(4) Miscellaneous Products:

Case Oil—2 5-gal. cans

(Hand hauled to or from
ship's tackle)18 cases to sling load

(Power hauled to or from
ship's tackle)24 cases to sling load

Cocoanut12 cases to sling load

Tea—Standard12 cases to sling load

Tea—Small16 cases to sling load

Copper (Large) 5 slabs to sling load

Copper (Small) 6 slabs to sling load

Copper (Bars) 9 bars to sling load

Cotton, under standard

conditions 3 bales to sling load

Rubber (1 tier on sling

maximum of10 bales to sling load

Gunnies, Large 2 bales to sling load

Gunnies, Medium 3 bales to sling load

Gunnies, Small 4 bales to sling load

Rags, large (Above 700#).. 2 bales to sling load

Plaintiff's Exhibit 34—(Continued)

| | |
|---|-----------------------|
| Rags, medium (500 to 700#) | 3 bales to sling load |
| Rags, small (below 500#) .. | 4 bales to sling load |
| Sisal, large | 3 bales to sling load |
| Hemp, ordinary | 5 bales to sling load |
| Jute (400#) bales..... | 5 bales to sling load |
| Pulp, bales weighing 350# or more..... | 6 bales to sling load |
| Pulp, bales weighing 349# or less..... | 8 bales to sling load |
| Steel drums, containing Asphalt, Oil, Etc. weighing 500# or less..... | 4 to the sling load |
| (When using Chine Hooks) | |
| Steel drums, containing Asphalt, Oil, Etc. weighing 500# or less on board (capacity of board—1 tier) maximum of | 5 drums to sling load |
| Barrels, wood, heavy, containing wine, lard, etc., maximum of..... | 4 bbls. to sling load |
| (When using Chine Hooks) | |
| Barrels, wood, heavy, containing wine, lard, etc., (capacity of board—1 tier) on board—maximum of | 4 bbls. to sling load |
| Barrels, wood, containing Dry Milk, Sugar, etc..... | 6 bbls. to sling load |

Plaintiff's Exhibit 34—(Continued)

(Present port practice or gear in handling drums of asphalt or barrels shall not be changed in order to increase the load).

Newsprint, rolls 2 rolls to sling load

Newsprint, rolls 1 when Wgt. 1800#
or over

(5) Sacks:

Flour—140 lbs.15 sacks to sling load

Flour— 98 lbs.20 sacks to sling load

Flour— 49 lbs.40 sacks to sling load

Flour— 49 lbs.

(in balloon sling).....50 sacks to sling load

Cement22 sacks to sling load

Wheat15 sacks to sling load

Barley15 sacks to sling load

Coffee—Power haul from

and to ship's tackle.....12 sacks to sling load

Coffee—Hand haul from

and to ship's tackle..... 8 sacks to sling load

Other sacks—maximum 2100# to sling load

(6) When flat trucks are pulled by hand between ship's tackle and place of rest on dock, load not to exceed 1400#.

(7) Number of loaded trailers (4 wheelers)—to be hauled by jitney as follows: Within the limits of the ordinary berthing space of the vessel—2 trailers.

Long hauls to bulk head warehouse or to adjoining docks or berths—3 trailers.

Plaintiff's Exhibit 34—(Continued)

Extra long haul to separate docks or across streets—4 trailers, providing that four (4) trailers shall be used only where it is now the port practice.

- (8) When cargo is transported to or from the point of stowage by power equipment, the following loads shall apply:

| | |
|---------------------|----|
| 48— 1 talls | 40 |
| 24— 1 talls | 60 |
| 24— 2's talls | 48 |
| 24—2½'s talls | 40 |
| 6—10's talls | 50 |
| 6—12's talls | 50 |

It is agreed that the employers will not use the maximum loads herein set forth as a subterfuge to establish unreasonable speed-ups; nor will the ILWU resort to subterfuges to curtail production.

No Port Labor Relations Committee shall have power to add to or to alter in any respect any of the maximum loads herein provided for.

Section 12.

Commencing on the date hereof and continuing during the life of this contract, the Coast Labor Relations Committee shall conduct investigations and a survey looking toward the restoration of reasonable efficiency (excluding comparisons prior to January 1, 1935) in the performance of longshore work and reasonable compliance with the provisions of this contract which the union agrees to provide and maintain during the life of this agreement.

Plaintiff's Exhibit 34—(Continued)

On February 1, 1941, a wage review shall be conducted of the basic straight and overtime wage rates specified in Section 3 hereof, the Employers agreeing that if by that date reasonable rates of production and efficiency (excluding comparisons prior to January 1, 1935) have been restored and reasonable compliance with this contract has been provided by the Union, a wage increase in addition to the basic wage rate set forth in Section 3 amounting to 5c per hour straight time and 10c per hour overtime shall be granted.

Said date of February 1, 1941 for such wage review is conditioned upon the execution of this agreement on or before December 1, 1940, and if the execution thereof shall be delayed at the request of the Union, then the date of such wage review shall be corresponding deferred.

It is further agreed that if the Employers shall refuse to grant such increase, the matter shall at the request of the Union be referred to the Coast Arbitrator who shall determine in conjunction with the efficiency then prevailing and reasonable compliance [145] then provided, whether such increase shall be granted.

Semi-annually thereafter, the rates of pay and overtime rates prevailing shall, at the request of either party be reviewed, and if the parties cannot agree shall at the request of either party be determined by the Coast Arbitrator, and in all such wage reviews wage levels shall be considered in conjunc-

Plaintiff's Exhibit 34—(Continued)

tion with the obligation of the Union to provide reasonable compliance with the provisions of this agreement.

In Witness Whereof, the parties hereto through their representatives duly authorized have executed this agreement on the 20th day of December, 1940, in the City and County of San Francisco, State of California.

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST.

Acting on behalf of:

Waterfront Employers of Washington, Waterfront Employers of Portland, Waterfront Employers' Association of San Francisco, Waterfront Employers' Association of Southern California.

By /s/ W. J. BUSH

/s/ JOHN CUSHING

/s/ HUGH GALLAGHER

/s/ JOS. A. LUNNY

/s/ F. P. FOISE

/s/ J. B. BRYAN

/s/ F. C. GREGORY

/s/ A. BOYD

/s/ J. B. BRYAN

/s/ F. C. GREGORY

/s/ A. BOYD

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION DISTRICT
NO. 1.

By /s/ H. R. BRIDGES

/s/ MATT MEEHAN [146]

Plaintiff's Exhibit 34—(Continued)

Supplemental Agreement

This agreement made by and between International Longshoremen's & Warehousemen's Union District 1 and Waterfront Employers Association of the Pacific Coast acting on behalf of members engaged in the steam schooner trade on the Pacific Coast:

Witnesseth:

That the award of the National Longshoremen's Board of October 12, 1934 as amended by agreements between the parties thereto and as amended in the foregoing agreement, shall govern longshore work on steam schooners operated by members of the Waterfront Employers Association of the Pacific Coast; provided, however, that members of crew of steam schooners may perform cargo work properly within the scope of their duties, that neither the Union nor the Employers shall be committed with reference to scope or nature of the duties of longshoremen or members of the crews of steam schooners, but any dispute relating thereto shall be determined by the Coast Labor Relations Committee created under such agreement in accordance with the procedure set forth in Section 9 thereof; and any decision of the Coast Labor Relations Committee, or, if the members thereof cannot agree, of the Coast Arbitrator, shall be final and binding. The provisions of said agreement do not apply to wages or working conditions of crews on steam

Plaintiff's Exhibit 34—(Continued)

schooners during such time as they are working cargo.

In witness whereof, the parties hereto through their representatives duly authorized have executed this agreement on the 20th day of December, 1940, in the City and County of San Francisco, State of California. [148]

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST.

By /s/ F. P. FOISIE

President.

/s/ A. BOYD,

Secretary.

Acting on behalf of:

Waterfront Employers of Washington, Waterfront Employers of Portland, Waterfront Employers' Association of San Francisco, Waterfront Employers' Association of Southern California.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION DISTRICT
NO. 1.

By /s/ H. R. BRIDGES

President.

/s/ MATT MEEHAN. [159]

This Agreement by and between the International Longshoremen's and Warehousemen's Union, District No. 1, hereinafter designated as the Union, and the Waterfront Employers Association of the Pa-

Plaintiff's Exhibit 34—(Continued)

cific Coast on behalf of the Waterfront Employers of Washington, Waterfront Employers of Portland, Waterfront Employers Association of San Francisco and Waterfront Employers' Association of Southern California, hereinafter designated as the Employers:

Witnesseth:

The parties hereto having made an agreement of even date herewith concerning longshore work at Pacific Coast ports (which agreement is referred to as the "longshore contract") do hereby renew that certain Supplementary Memorandum dated September 30, 1938, a copy of which is attached, for the full term of said longshore contract.

In Witness Whereof, the undersigned have executed the foregoing agreement on this 20th day of December, 1940, in the City and County of San Francisco, State of California.

**WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST.**

By /s/ F. P. FOISIE
President.

/s/ A. BOYD,
Secretary.

Acting on behalf of:

Waterfront Employers of Washington, Waterfront Employers of Portland, Waterfront Employ-

Plaintiff's Exhibit 34—(Continued)

ers' Association of San Francisco, Waterfront Employers' Association of Southern California.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION DISTRICT
NO. 1.

By /s/ H. R. BRIDGES
President.

/s/ MATT MEEHAN. [150]

Supplementary Memorandum.

The Agreement by and between The International Longshoremen's and Warehousemen's Union, District No. 1, hereinafter designated as the Union, and the Waterfront Employers Association of the Pacific Coast on behalf of the Waterfront Employers of Seattle, Waterfront Employers of Portland, Waterfront Employers Association of San Francisco and Waterfront Employers' Association of Southern California, hereinafter designated as the Employers;

Witnesseth:

The I. L. & W. U. agrees not to assert its rights to preference of employment for I. L. & W. U. members in the ports of Tacoma, Anacortes, Port Angeles and Olympia until such time as it is satisfactorily established that a majority of the longshoremen on the registration lists in such ports as of this date are members of the I. L. & W. U.

Plaintiff's Exhibit 34—(Continued)

The I. L. & W. U. shall not be held responsible for disciplining of longshoremen in these ports but reserves the right to intervene in case of any discrimination against any member of the I. L. & W. U. in order to protect his rights under the aforesaid contract. The provisions of this paragraph shall in no way abridge the powers of the Labor Relations Committee in said ports.

This memorandum shall in no way constitute a waiver of the rights of the I. L. & W. U., District No. 1 [151] under the decision of the National Labor Relations Board dated June 21st, 1938, and it is clearly agreed that it is not the intent of the parties in any way to change or modify the collective bargaining unit as defined in above said decision, or in any way to affect the rights of the I. L. & W. U. with respect to representation and collective bargaining; on the contrary, the agreement above referred to covers all the longshore work in all of the areas defined by said decision of the N. L. R. B.

In Witness Whereof, the undersigned have executed the foregoing agreement on this 30th day of September, 1938 in the City and County of San Francisco, State of California.

**WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST.**

By A. E. ROTH,
President.

Plaintiff's Exhibit 34—(Continued)

Acting on behalf of:

Waterfront Employers of Washington, Waterfront Employers of Portland, Waterfront Employers' Association of San Francisco, Waterfront Employers' Association of Southern California.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION DISTRICT
NO. 1.

By /s/ H. R. BRIDGES

President. [152]

By this memorandum the undersigned agree that they will enter into negotiations looking toward a coastwise agreement relative to work performed by employees of member companies of the Waterfront Employers Association of the Pacific Coast in the indirect movement of cargo. The scope of such agreement shall be included in the negotiations.

If negotiations shall fail, the issues may be arbitrated if the parties consent.

All work covered thereby will be that performed by members of the International Longshoremen's and Warehousemen's Union, and preference of employment for the International Longshoremen's and

Plaintiff's Exhibit 34—(Continued)

Warehousemen's Union will be part of any agreement to be made.

By /s/ F. P. FOISIE

President.

/s/ A. BOYD,

Secretary.

Waterfront Employers Association of the Pacific Coast.

By /s/ H. R. BRIDGES,

President.

International Longshoremen's and Warehousemen's Union District No. 1

/s/ MATT MEEHAN .

Dated: December 20th, 1940. [153]

PLAINTIFF'S EXHIBIT 36.

Admitted Mar. 23, 1945.

Excerpts from Minutes of Joint Annual Meeting of the Board of Directors of the Waterfront Employers Association of the Pacific Coast and the Waterfront Employers Association of California.

February 9, 1944—10:00 a.m.

Room 310—Financial Center Building

Members Present:

Messrs. C. Winkler, A. E. Stow, A. J. Chalmers, T. C. Greene, W. J. Bush, W. T. Sexton, J. J.

Walsh, L. P. Bailey, Ralph W. Myers, W. D. Clark, Hugh Gallagher, J. B. Banning, Chas. Tilley.

Ex Officio Members:

R. C. Clapp, Chas. Spear, Sam Stocking, E. C. Davis, Geo. Schirmer, T. W. Buchholz, Tom James, Clayton Jones, Chas. Howard.

Also Present:

Messrs. F. P. Foisie, K. J. Middleton, B. O. Pickard, William Marlowe, A. Boyd, Gregory A. Harrison, M. G. Ringenberg, J. B. Bryan, F. C. Gregory.

Purpose of Meeting.

Consideration of Docket, copy of which is attached and made a part of these Minutes. [154]

Delinquencies: Mr. Foisie reported that remittance had been recently received from the Coos Bay stevedores paying the Association's coastwise tonnage tax after deducting hiring hall expenses.

Mr. Middleton read excerpts from letters and the Minutes of the Seattle trustees with reference to tonnage assessment and hiring hall expenses from Mr. Hill who spoke for the Twin Harbors and Grays Harbor Stevedoring Company and the Olympic Stevedoring Company. Mr. Middleton indicated that Mr. Hill had made a remittance to cover the tonnage tax for 1943 after deducting hiring hall and port expenses and that the check in payment thereof had shown the endorsement "Payment in full for 1943" but that further investiga-

tion should be made as to whether any previous years tonnage tax was due and also examination should be made of just what the hiring hall expenses cover.

Mr. Harrison reported in connection with the remittance by Griffiths & Sprague of settlement and a check for \$17,000 sent to Mr. James in San Francisco with an accompanying letter stating that the above amount covered the 1943 tonnage tax of Griffiths & Sprague at $1\frac{1}{4}$ c per ton, instead of the $2\frac{1}{2}$ c regulation tax per ton, and that the check covering the remittance bore an endorsement: "In full payment of 1943 Tonnage Assessments", that the letter asked Mr. James to endeavor to secure for Griffiths & Sprague, through the Association, some relief of the regular tonnage assessments. He stated that Mr. Dobrin, association counsel in Seattle, was in doubt whether the Association should deposit the check and dispute the inadequacy of it later or return the check and take the position that the assessment should be paid in full. [155]

Mr. Middleton reported regarding the suit against Western Stevedore Company's delinquency in Seattle, that suit had been filed; that default judgment was about to be requested and that Western Stevedore had agreed before he left Seattle to pay up their tonnage assessment in full.

Mr. Foisie summed up the assessment and hiring hall problem with the outports in the Oregon-Washington areas, recommending that all contracting stevedores in these outports pay the Associa-

tion's tonnage assessments in full and that in the future that the hiring hall expenses in those ports be paid by the contracting stevedores and reimbursed by the Association subject to the Association's control of said expenditures. That the Association would at all times help a resident stevedore in such outports but that it could not be party to blocking other stevedores from working said ports if the Association shares in the payment of the expenses of the hiring hall. He recommended that Association counsel draft the necessary instructions to carry out these proposals to be transmitted to the stevedores in the Oregon-Washington outports and Bar Harbors.

Upon motion duly made and seconded, the following Resolution was unanimously adopted:

Be It Resolved, That it be the order of this Board that the recommendations regarding payment of assessments by stevedores in the Washington-Oregon outports and Bar Harbors and the payment by the Association of the proper proportion of the hiring hall expenses in said outports and Bar Harbors be carried out as recommended and that counsel for the Association be instructed to draft the necessary instructions to be transmitted to the stevedores in said Washington-Oregon outports and Bar Harbors to carry out the said recommendations and this order of the Board. [156]

Change in Assessments.

The representatives of the Washington Asso-

ciation having presented to the Board the suggestion that the system of assessments be converted from tonnage to manhours, the issue was discussed in a number of phases at some length after which, upon the motion of Mr. Doelker, second by Mr. Clapp, the following Resolution was unanimously adopted:

Be It Resolved, that a Committee be appointed to study the entire subject of coastwise assessments for this Association, acting on the suggestion of the Washington Association that the system of assessments be converted from tonnage to a manhour basis, and that this said Committee meet as soon as practical and report back to this Board.

The Committee appointed by the chair to study the change in assessment proposals was Messrs. W. J. Bush, Tom James, W. T. Sexton, R. C. Clapp and Sam Stocking.

Meeting adjourned at 12:10 p.m.

/s/ A. BOYD,

Secretary.

This is to certify that I have carefully compared the transcript, to which this certificate is attached, with the record on file in this office of which it purports to be a copy, and that the same is a full, true and correct copy thereof.

/s/ A. BOYD,

Secretary-Treasurer.

Waterfront Employers Association of the Pacific Coast.

Dated at San Francisco, this 10 day of August, 1944. [157]

DOCKET

Annual Meetings of Coast and California Associations—Wednesday, February 9, 1944

10:00 a.m.—Coast Directors meet.

(1) Report from Ports:

Washington—Mr. Middleton;

Oregon—Mr. Chalmers;

San Francisco—Mr. Gregory;

Southern California—Mr. Banning.

(2) Distribution of cargoes between the several ports;

What is being done to steady the load?

What can be added if and as the war shifts to the Pacific?

(3) Subsistence allowance to longshoremen when working away from home port;

And review of transporting longshoremen between ports.

(4) Progress on delinquencies;

(a) Payment by Coos Bay, Grays and Twin Harbors and Olympia Stevedoring Co.; with employer's Hiring Hall expense borne by the Coast Association;

(b) Griffiths & Sprague tender of partial payment;

(c) Suit against Western Stevedore Co.;

(d) San Francisco Army Port of Embarkation still unpaid. [158]

(5) Suggestion from Washington Association

that the Coast system of assessment be converted from tonnage to man-hours.

(6) Report on the work of the M. I. B.

Lunch—12:15 p.m.—Commercial Club.

How many will not be present?

2:00 p. m.—Membership Joint Meeting of the Coast and California Associations.

Word from the Pacific Coast head of the War Shipping Administration on where we are and what's ahead—John E. Cushing;

The National Federation of American Shipping—Frazer A. Bailey;

A Review of Shipping's Relationships with Government During the War—E. Russell Lutz;

Financial Reports—Coast and all port associations are on a sounder financial basis than at any time thus far;

Recommended that the remaining indebtedness to our members of \$36,000, borrowed since 1937, be paid.

Election of Directors and officers—Report of Nominating Committee: Messrs. Ewing, Greene, Gallagher, James, Mills.

3:30 p.m.—New Boards of Directors meet:

Election of officers and Executive Committee.

This is to certify that I have carefully compared the transcript to which this certificate is attached, with the record on file in this office of which it

purports to be a copy, and that the same is a full, true and correct copy thereof.

/s/ A. BOYD,

Secretary Treasurer.

Waterfront Employers Association of the Pacific Coast.

Dated at San Francisco this 10th day of August, 1944. [159]

PLAINTIFF'S EXHIBIT 41

ruling reserved Mar. 23, 1945.

objection withdrawn and admitted Mar. 23, 1945.

1943

| (All Member Companies) | Ship | Dock |
|---|-----------|-----------|
| Total man hours for the Puget Sound District | 3,199,313 | 2,290,700 |
| Total man hours for "Griffiths Company" (same district) | 1,349,369 | 345,841 |

1943

BREAK-DOWN OF GRIFFITHS COMPANY "MAN HOURS" FOR PUGET SOUND DISTRICT

| | Port of Seattle | Port of Tacoma | Port of Everett |
|--------------|-----------------|----------------|-----------------|
| January | 69,734 (Ship) | 3,042 (Ship) | 1081¼ (Ship) |
| ..... | 21,840½ (Dock) | 490½ (Dock) | 59 (Dock) |
| February .. | 106,015¾ (S) | 4,020¾ (S) | 72 (S) |
| .. | 30,783¾ (D) | 1,730¾ (D) | 16 (D) |
| March | 112,033¼ (S) | 1,457 (S) | (S) |
| ..... | 28,511½ (D) | 50 (D) | (D) |
| April | 107,815 (S) | 33 (D) | (S) |
| ..... | 30,311¼ (D) | 686 (S) | (D) |
| May | 131,292½ (S) | 12,509½ (S) | 894 (S) |
| ..... | 30,665⅛ (D) | 233¾ (D) | 341¾ (D) |
| June | 114,382¾ (S) | 361 (S) | (S) |
| ..... | 32,830¼ (D) | 46 (D) | (D) |
| July | 115,435½ (S) | 9,540 (S) | 945½ (S) |
| ..... | 23,350½ (D) | 3,019½ (D) | 341 (D) |
| August | 108,511¾ (S) | 4,157½ (S) | (S) |

| | Port of Seattle | Port of Tacoma | Port of Everett |
|---------------|---------------------------|-------------------------|-----------------------|
| ..... | 19,957 $\frac{1}{4}$ (D) | 757 $\frac{1}{2}$ (D) | (D) |
| September | 135,529 $\frac{3}{4}$ (S) | 918 (S) | (S) |
| | 38,066 $\frac{1}{4}$ (D) | (D) | (D) |
| October | 127,004 $\frac{3}{4}$ (S) | 2,965 $\frac{1}{2}$ (S) | 761 $\frac{1}{2}$ (S) |
| ..... | 37,351 (D) | 530 $\frac{1}{2}$ (D) | (D) |
| November .. | 92,260 $\frac{1}{4}$ (S) | 4,340 $\frac{1}{4}$ (S) | (S) |
| .. | 36,018 $\frac{1}{2}$ (D) | 468 $\frac{1}{4}$ (D) | (D) |
| December .. | 70,476 $\frac{1}{4}$ (S) | 3,105 (S) | (S) |
| .. | 20,093 $\frac{3}{4}$ (D) | 339 (D) | (D) |

PLAINTIFF'S EXHIBIT 42

Admitted Mar. 23, 1945.

1944

| (All Member Companies) | Ship | Dock |
|---|-----------|-----------|
| Total man hours for the Puget Sound District | 3,554,026 | 3,097,928 |
| Total man hours for "Griffiths Company" (same district) | 1,531,128 | 479,875 |

1944

BREAKDOWN OF GRIFFITHS COMPANY "MAN HOURS" FOR PUGET SOUND DISTRICT

| | Port of Seattle | Port of Tacoma | Port of Everett |
|--------------|-----------------------------|--------------------------|---------------------------|
| January | 120,354 (Ship) | 3,042 (Ship) | 1081 $\frac{1}{4}$ (Ship) |
| .... | 33,295 $\frac{1}{4}$ (Dock) | 490 $\frac{1}{2}$ (Dock) | 59 (Dock) |
| February .. | 122,339 $\frac{1}{2}$ (S) | 1,259 $\frac{1}{2}$ (S) | (S) |
| .. | 33,709 $\frac{1}{2}$ (D) | 254 $\frac{3}{4}$ (D) | (D) |
| March | 160,564 $\frac{3}{4}$ (S) | 156 (S) | (S) |
| ..... | 35,835 $\frac{1}{2}$ (D) | (D) | (D) |
| April | 152,001 (S) | 1,621 $\frac{1}{2}$ (S) | (S) |
| ..... | 42,557 $\frac{1}{2}$ (D) | 71 $\frac{1}{2}$ (D) | (D) |
| May | 177,201 (S) | 1,783 (S) | (S) |
| ..... | 46,813 (D) | 80 (D) | (D) |
| June | 94,284 $\frac{3}{4}$ (S) | (S) | (S) |
| ..... | 47,196 $\frac{3}{4}$ (D) | (D) | (D) |
| July | 146,558 (S) | (S) | (S) |
| ..... | 46,535 (D) | (D) | (D) |
| August | 134,221 (S) | (S) | (S) |
| ..... | 57,700 (D) | (D) | (D) |
| September | 131,447 (S) | (S) | (S) |
| | 63,565 (D) | (D) | (D) |

| | Port of Seattle | Port of Tacoma | Port of Everett |
|---------------|--|----------------|-----------------|
| ..... | 31,769 (D) | (D) | (D) |
| October | 128,162 (S) | (S) | (S) |
| ..... | 31,769 (D) | (D) | (D) |
| November .. | "Griffiths Company" failed to make any reports for this month. | | |
| December .. | 156,136 (S) | (S) | (S) |
| .. | 40,006 (D) | (D) | (D) |

PLAINTIFF EXHIBIT 43

Admitted Mar. 23, 1945.

1943

Total Seattle Man Hours—Ship & Dock (Seattle)
Griffiths Man Hours (Seattle)—Ship & Dock (Seattle)

1943

| | | Ship | Dock |
|-----------|--|-----------------------|-----------------------|
| January | Total Seattle man hours (For all Member Companies) | 167,737 $\frac{3}{4}$ | 149,868 |
| January | (For Griffiths Co.) | 69,734 | 21,840 $\frac{1}{2}$ |
| February | (Total (Seattle) | 188,384 | 175,927 |
| February | (Griffiths Co. (Seattle) | 106,015 | 30,783 |
| March | (Total | 235,408 $\frac{3}{4}$ | 186,992 $\frac{1}{2}$ |
| March | (Griffiths Co.) | 112,033 $\frac{1}{4}$ | 28,511 $\frac{1}{2}$ |
| April | (Total | 200,971 | 170,107 $\frac{3}{4}$ |
| April | (Griffiths Co.) | 107,815 | 30,311 $\frac{1}{4}$ |
| May | (Total | 217,972 | 174,722 $\frac{3}{8}$ |
| May | (Griffiths Co.) | 131,292 $\frac{1}{2}$ | 30,665 $\frac{1}{8}$ |
| June | (Total | 206,883 $\frac{3}{4}$ | 192,619 |
| June | (Griffiths Co.) | 114,382 $\frac{3}{4}$ | 32,830 $\frac{1}{4}$ |
| July | (Total | 248,869 $\frac{1}{2}$ | 164,922 |
| July | (Griffiths Co.) | 115,435 $\frac{1}{2}$ | 23,350 $\frac{1}{2}$ |
| August | (Total | 223,376 $\frac{1}{4}$ | 129,092 $\frac{3}{4}$ |
| August | (Griffiths Co.) | 108,511 $\frac{3}{4}$ | 19,957 $\frac{1}{4}$ |
| September | (Total | 242,771 $\frac{3}{4}$ | 137,692 |
| September | (Griffiths Co.) | 133,529 $\frac{3}{4}$ | 38,066 $\frac{1}{4}$ |
| October | (Total | 183,324 $\frac{1}{4}$ | 128,273 $\frac{3}{4}$ |
| October | (Griffiths Co.) | 127,004 $\frac{3}{4}$ | 37,351 |
| November | (Total | 170,113 | 115,453 |
| November | (Griffiths Co.) | 92,260 | 36,018 |
| December | (Total | 145,039 | 119,403 $\frac{3}{4}$ |
| December | (Griffiths Co.) | 70,476 $\frac{1}{4}$ | 20,093 $\frac{3}{4}$ |

PLAINTIFF'S EXHIBIT 44

Admitted Mar. 23, 1945.

1944

Total Man Hours for (Seattle)....Ship & Dock

Griffiths Co. (Man Hours) (Seattle)....Ship & Dock

1944

| | | Ship | Dock |
|-----------|---------------------------------|-----------------------|-----------------------|
| January | (Total (Seattle) | | |
| | All Companies | 179,824 | 158,790 |
| January | (Griffiths Co. | 120,354 | 33,295 |
| February | (Total (All Member | | |
| | Companies) | 182,648 $\frac{1}{4}$ | 135,984 |
| February | (Griffiths Co. | 122,339 $\frac{1}{2}$ | 33,709 $\frac{1}{2}$ |
| March | (Total | 219,781 $\frac{3}{4}$ | 176,889 $\frac{1}{4}$ |
| March | (Griffiths Co. | 160,564 $\frac{3}{4}$ | 35,835 $\frac{1}{2}$ |
| April | (Total | 228,696 $\frac{3}{4}$ | 169,964 $\frac{1}{4}$ |
| April | (Griffiths Co. | 152,001 | 42,557 $\frac{1}{2}$ |
| May | (Total | 256,260 $\frac{1}{4}$ | 206,200 |
| May | (Griffiths Co. | 177,201 | 46,813 |
| June | (Total | 181,781 | 199,524 $\frac{3}{4}$ |
| June | (Griffiths Co. | 94,284 $\frac{3}{4}$ | 47,196 $\frac{3}{4}$ |
| July | (Total | 250,217 $\frac{3}{4}$ | 215,941 $\frac{7}{8}$ |
| July | (Griffiths Co. | 146,558 | 46,535 |
| August | (Total | 250,868 $\frac{1}{4}$ | 205,180 |
| August | (Griffiths Co. | 134,221 | 57,700 |
| September | (Total | 226,781 $\frac{1}{2}$ | 221,219 |
| September | (Griffiths Co. | 131,447 | 63,565 |
| October | (Total | 189,607 $\frac{1}{4}$ | 178,294 |
| October | (Griffiths Co. | 128,162 | 31,769 |
| November | (Total | 66,399 $\frac{3}{4}$ | 151,353 $\frac{1}{4}$ |
| November | (Griffiths Co. No recoorts..... | | |
| December | (Total | 214,025 $\frac{3}{4}$ | 208,908 $\frac{3}{4}$ |
| December | (Griffiths Co. | 156,136 | 40,006 |

PLAINTIFF'S EXHIBIT 46

Admitted Mar. 27, 1945.

1943

Percentage Study Port Expense
Compared with Port Tonnage

| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 |
|---------------------|--|--------|-------------|--------|
| | *Coast Assn. Port Admin- istration Hir- ing Hall and Port Safety | % | Tonnage | % |
| Seattle | \$ 56,197.18 | 23.4 | 3,024,042** | 16.1 |
| Portland | 39,873.05 | 16.5 | 2,325,358 | 12.4 |
| San Francisco | 91,846.48 | 38.3 | 9,876,947 | 52.8 |
| So. Calif. | 52,290.66 | 21.8 | 3,511,363 | 18.7 |
| Total | \$240,207.37 | 100.0 | 18,737,710 | 100.0 |

(*) Excludes all Head Office expense (Safety, administrative, legal & arbitration) totaling.... \$83,629.52

(**) By adding 1,389,161 tons unreported by Griffiths & Sprague the % in Col. 5 would be 22, 11.6, 49.3, 17.1, respectively. [164]

1944

Percentage Study Port Expense
Compared with Port Tonnage

| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 |
|---------------------|---|--------|-------------|--------|
| | *Coast Assn. Port Admin- istrative, Hir- ing Hall and Port Safety | % | Tonnage | % |
| Seattle | \$ 77,180.43 | 27.5 | 2,592,168** | 12.7 |
| Portland | 47,895.05 | 17.0 | 2,812,725 | 13.8 |
| San Francisco | 88,065.91 | 31.3 | 9,861,670 | 48.3 |
| So. Calif. | 67,942.20 | 24.2 | 5,147,363 | 25.2 |
| Total | \$281,083.59 | 100.0 | 20,413,926 | 100.0 |

(*) Excludes all Head Office expense (Safety, administrative, legal and arbitration) totaling....\$121,281.35

(**) By adding 1,589,681 tons unreported by Griffiths & Sprague the % in Col. 5 would be 19, 12.8, 44.8, 23.4, respectively. [165]

DEFENDANT'S EXHIBIT A

Admitted Mar. 27, 1945

Phone Exbrook 3913

Waterfront Employers Association
of the Pacific Coast
Financial Center Building
405 Montgomery Street
San Francisco, Cal.

February 2, 1943

Budget and Finance Committee:

Messrs. W. J. Bush, Hugh Gallagher, T. C. Greene, Thomas James, J. A. Lunny.

The assessment policy and procedure of this Association has served as acceptably as any taxation is ever likely to be acceptable ever since the Association was formed. The tax has been uniform, simple and evenly applied to all cargoes and all members. There has been no refusal to pay until now; even though the war has converted practically all cargoes from commercial to war.

All cargo handled carries a base tonnage assessment of $2\frac{1}{2}\text{c}$ for the support of the Associations, Coast and port. What commercial cargoes remain, bear the assessment. Provision was made in War Shipping Administration and Lend-Lease contracts for the payment of the Association's assessments through provision in the fixed fee to member companies. The Army Transport Service in San Francisco is the only instance in which the Government does its own cargo-handling with the use of our

longshoremen and is committed to meeting its share of the cost.

The 2½c per ton assessment was, prior to the war, paid by the steamship members; with contract stevedores as associate members undertaking to collect the same assessment from non-member steamship companies and in all cases doing so.

In all ports on this Coast but Washington, the stevedores allowed in their contracts for the Association assessments and are remitting regularly and in full.

In Washington ports this collection of assessments, it appears, has been carried out on all cargoes but Army. These contracts are competitive. Some of the Stevedores in Washington ports are delinquent on War Shipping Administration, Lend-Lease and commercial cargoes. [166]

Stevedores in Washington ports sought relief last November on payment of the assessment on Army and Navy cargoes by asking the Coast Association to:

1. Assess those companies who do stevedoring work on the dock a share of the tax;
2. Reduce the tonnage tax payable by the stevedore and terminal cargo-handling companies by some contribution from the shipping companies.

The Coast Board meeting with the stevedoring representatives declined to change the assessment policy, but concurred in the proposal to ask that

companies who split the stevedoring contract by handling cargo to and from the ship in Washington ports (unlike the practice in other ports) share in the assessment.

The Washington trustees concurred with the Coast Board in agreeing that the delinquencies should be met. The Washington trustees advocated that companies doing Army and Navy work to ship-side should share the tonnage assessment; the Coast trustees agreeing if the Seattle member companies were willing. The Washington trustees differed from the Coast trustees in that they believe the steamship companies should contribute a part of the assessment rate.

After thorough investigation and many conferences, it appears that the Coast Association is confronted with either giving the program of the Washington trustees a trial or face a possible withdrawal by that Association from the Coast fold.

It is recommended that the resolution of the trustees of the Waterfront Employers of Washington of November 24, 1942, be concurred in by the Board of Directors of the Coast Association as a working program for adapting the uniform Coast tonnage assessment to the conditions prevailing among Washington stevedores handling Army and Navy tonnage.

The reasons supporting such recommendation are:

It is their proposal;

It is based on producing the equivalent of the Coast uniform 21½¢ assessment;

It may bring relief to the contract stevedore;

The working out of the proposal is almost entirely in their own hands, with help from the Coast Association;

There is prospect (though not assurance) that the proposal will work out satisfactorily.

It is our understanding of the proposal, and the basis of this recommendation, that:

It is limited to the Waterfront Employers of Washington (to be extended later to Oregon if successfully worked out in Washington);

It applies only to Army and Navy commodity contract work (commercial, War Shipping Administration and all Lend-Lease contract work continues to carry the obligation of the stevedore to pay the 21½¢ per ton).

The salient facts on which the Washington Association proposal is based are:

That it is equitable for those doing cargo-handling on the dock to share the burden of the tax with those who do the cargo-handling on the ship, thus putting this combined operation on a basis comparable with the custom in other ports on the Coast:

Concerning the work done on docks for Army and Navy, the companies concerned and their estimated proportions of work are as follows:

| | Army | Navy |
|-----------------------|------|------|
| Ames Terminal | 10% | |
| Matson Terminal | 10% | |
| Luckenbach Terminal | | 10% |
| Western Stevedore | 40% | |
| Rothschild Stevedore | 25% | 90% |
| Everett Stevedore | 10% | |
| Griffiths and Sprague | 5% | |

(Griffiths and Sprague do practically all Army stevedoring on ship; Rothschild all Navy stevedoring on ship and most of it on the dock; since January 1, 1943, Western Stevedoring is doing Army work in Tacoma.) [168]

On the request of the stevedores that steamship compaines contribute because they have a vital interest in continuing the Association through the war in order that it may be able to serve after the war, the largest steamship operator, the Alaska Steamship Company, is agreeable to a moderate contribution per ship; other steamship companies operating in Washington ports may be willing to go along.

Delinquency is a more difficult problem to solve because the ability to pay may be at stake as well as the willingness to accept the obligation. The Washington Association proposed that the stevedores doing the Army and Navy work, meet the tonnage assessment to January 1, 1942. To that extent the Coast and Washington Associations are in agreement. The Washington Association proposes that the "delinquency" for 1942 shall be met by sharing the assessment between the stevedore

companies doing the ship work and stevedore and terminal companies doing dock work.

There seems no reasonable prospect of securing consent of other stevedore companies to say nothing of terminal companies to any "retroactive" contributions. There likewise seems no likelihood that the shipping companies would contribute toward the 1942 delinquency. We seem to have reached the point when recourse must be had to suit; but the time for making this decision would seem to be after getting the Coast and Washington Associations in agreement.

The objective to be attained is to reconcile the positions of the Washington and Coast Boards expressed in the attached resolutions if this is possible. These seem in conflict on paper, but the foregoing program offers a possibility of working them out harmoniously. If we reach common ground between the two Associations, difficulty with recalcitrant members can be met more effectively by local and Coast Associations working together. If there is to be a break, it is far better that this should be between the combined Associations and the recalcitrant members than a split between the Associations.

Should the Washington trustees be unable to carry out their own proposals with their members, then the uniform Coast assessment policy should be reestablished for Washington ports as for all others.

(Signed)

F. P. FOISIE [169]

DEFENDANT'S EXHIBIT B

Admitted Mar. 27, 1945.

Minutes of Meeting of Budget and Finance Committee of the Waterfront Employers Association of the Pacific Coast.

February 2, 1943—11:00 a.m.

Mr. Foisie's office.

Present: Messrs. W. J. Bush, Tom James, T. C. Greene, Hugh Gallagher.

Also Present: Messrs. F. P. Foisie, A. Boyd.

Purpose of Meeting: Discussion of Assessments and other affairs in Seattle area.

Mr. Foisie presented under date of February 2 a letter addressed to the Budget and Finance Committee regarding the situation in the Northwest, copy of which is attached and made a part of these minutes.

Mr. Foisie also read a letter from K. J. Middleton setting forth his position, which was discussed.

Following is the consensus of opinion of the Executive Committee:

The tonnage assessment of $2\frac{1}{2}c$ per ton on all cargo handled by them other than commercial cargo handled for member steamship companies, must be met by the contracting stevedores performing the work;

The Committee has no objection to the contracting stevedores getting relief from other stevedore

companies performing part of the operation from the first or last place of rest on the dock to ship's side or vice versa;

That this association will not obligate itself to advise the terminal operators that they must contribute to the assessment;

That this association does not agree that the steamship companies members of the association must be forced to voluntarily contribute a portion of the 2½¢ tonnage assessment;

That Mr. Foisie on his next visit to Seattle endeavor to discuss the issue with Mr. Kenneth Coleman and D. K. McDonald to secure their influence in an effort to smooth the Seattle situating regarding assessments;

That it be made clear to the Seattle Trustees the position of the Coast Board in regard to the assessment and collection of tonnage assessments as set forth above but that Mr. Foisie do not appear before the Seattle Trustees in this matter, but endeavor to have either Lawrence Bogle or A. R. Lintner convey to the Seattle Trustees the Coast Board's position;

That Mr. Foisie arrange a meeting as soon as possible in San Francisco for the Executive Committee with A. R. Lintner to discuss the issues.

Meeting adjourned at 12:15 p.m.

A. BOYD,

Secretary. [170]

DEFENDANT'S EXHIBIT C

Admitted Mar. 27, 1945.

Waterfront Employers Association
of the Pacific Coast
Financial Center Building
405 Montgomery Street
San Francisco 4, Calif.

November 16, 1944

(Registered Mail)

To the Members:

Standard Practice for Reporting Tonnage and
Assessment Rates on War Cargoes

Attached, effective December 1, 1944, is the rate and method of reporting tonnage on war cargoes adopted by the Board of Directors November 8, 1944.

As a matter of background, the reason for the Board establishing a uniform practice is due to certain war changes that have taken place, both in the source of collecting tonnage assessments and the method used by members in reporting. Formerly, with minor exceptions, all tonnage was reported to the Association and assessments paid by member steamship companies, contracting stevedores paying on no cargo other than such non-member tonnage handled by them.

Now, the contracting stevedores and the steamship companies performing stevedoring have assumed the obligation to protect the Association for

tonnage assessments. Virtually all cargoes now moving are for the Army, Navy, WSA or Lend-Lease. These cargoes are not handled on a uniform basis; in some instances the 2,000 pound ton weight is used and other the 2,240 pound ton weight, and also the measurement ton of 40 cubic feet.

There has not been a uniform practice in reporting tonnage to the Association; some have converted to the 2,000 pound [171] weight ton and other have used the long ton. The Board thought it advisable, in order to establish an equitable uniform practice, to write a new formula for reporting and paying tonnage whereby assessments are paid to the Association on the same tonnage basis on which stevedoring is paid.

The Board further resolved that no adjustments shall be made for past inequities in reporting tonnage and paying assessments prior to December 1, 1944.

This change will in no way affect the reporting and paying of assessments on commercial cargo under the long established practice now in effect.

A. BOYD,

Secretary-Treasurer.

Waterfront Employers Association of the Pacific Coast.

AB:IM

Attachment [172]

Waterfront Employers Association
of the Pacific Coast
Financial Center Building
405 Montgomery Street
San Francisco 4, Cal.

November 16, 1944

(Registered Mail)

Members:

By Resolution of the Board of Directors, effective December 1, 1944, the standard practice for reporting tonnage and paying assessments to the Association on war cargoes for the Army, Navy, War Shipping Administration, Lend-Lease or other government agency loaded or discharged at all U. S. Pacific Coast Ports (except Alaska ports) will be as follows:

All cargo handled on weight or measusement basis, $2\frac{1}{2}c$ per ton.

Note:

Companies stevedoring cargoes should report tonnage and pay assessments on the same basis they are paid; that is, if the stevedoring is performed and paid for on a basis of 2,000 pounds to the ton, tonnage should be reported as 2,000 pounds equals 1 ton; if on the basis of 2,240 pounds to the ton, tonnage should be reported as 2,240 pound equals 1 ton; if on a measurement basis, tonnage should be reported as 40 Cubic feet equal one ton.

When reimbursement for loading or discharging certain cargoes is not by weight or measurement,

but on a men-hour basis, the weight of such cargo can be obtained from the cargo agent (berth agent), and the tonnage reported for assessment purposes on the basis of 2,240 pounds to the ton. When not obtainable the weight of such cargo to be estimated and tonnage reported on the basis of 2,240 pounds to the ton.

A. BOYD,

“ Secretary-Treasurer.

Waterfront Employers Association of the Pacific Coast.

AB:IM [173]

DEFENDANT'S EXHIBIT D

Admitted Mar. 27, 1945.

Phone EXbrook 3913

Waterfront Employers Association
of the Pacific Coast
Federal Reserve Bank Building
Sansome at Sacramento Street
San Francisco, Cal.

February 15th, 1940

It is the recommendation of the Stevedoring Committee—

1. That all contracting stevedores and steamship lines, members of the Waterfront Employers Association of the Pacific Coast or of the Port Associations, be furnished with a full and complete membership list of the members of the Waterfront

Employers Association of the Pacific Coast and of each of the four Port Associations;

2. That member contracting stevedores or steamship lines performing stevedoring operations or contracting for stevedoring work for non-members, before commencing work ascertain from the vessel owner, operator, or agent, whether or not such owner, operator or agent will accept responsibility for the tonnage tax;

3. That all member contracting stevedores and steamship lines accept the responsibility for billing the tonnage assessment on all tonnage handled by them for non-member vessels, their owners, operators or agents;

4. That in the event of failure to get an acceptance of responsibility for the payment of the tonnage tax from the non-member vessel operator, a man-hour assessment of 4 cents per man-hour be authorized, collection of which will be the responsibility of the member contracting stevedore or steamship lines, and that all member contracts for stevedoring such non-member vessels shall provide for the levy and collection of the same;

5. The above recommendation (Item No. 4) is predicated upon the understanding that the Waterfront Employers Association of the Pacific Coast will proceed at once to reach an agreement with the District Officials of the I. L. & W. U., that where owners or operators of non-member vessels do not agree to promptly pay tonnage or man-hour assessments, no men will be furnished by the I. L.

& W. U. or any of its Locals for stevedoring work on such vessels, and that in event such agreement cannot be reached the matter shall be promptly brought to arbitration for final settlement.

Submitted by the

STEVEDORING COMMITTEE.

Approved and adopted by formal resolution of the Board of Directors February 15, 1940, and effective at once.

A. BOYD,

Secretary. [174]

DEFENDANT'S EXHIBIT E

Admitted Mar. 27, 1945.

February 15, 1940

Non-Member Assessments

Stevedore Committee presented its report on collection of non-member assessments.

Resolution Adopted:

Be It Resolved, That the Report by the Stevedoring Committee on reporting and levying of non-member tonnage and collection of assessments and man-hour charges be adopted on a coastwise basis.

DEFENDANT'S EXHIBIT F

Admitted Mar. 27, 1945.

(Excerpt from Minutes)

Joint Meeting of Board of Directors of the Waterfront Employers Association of the Pacific Coast and Waterfront Employers Association of San Francisco.

January 12, 1943

2:30 p.m.

“Mr. Foisie discussed briefly the unsettled condition in the Northwest over non-payment of assessments by some of the Stevedores in the Puget Sound area and indicated that from available information Griffiths & Sprague was nearly the only company in Seattle which is not reporting and paying the Association's tonnage assessments on cargo handled, although there were a few minor similar conditions in the Grays Harbor and some of the Puget Sound outports that would have to be worked out after the Griffiths & Sprague issue is settled. He indicated that time was running in connection with this controversy and that the obligation was rapidly mounting as far as Griffiths & Sprague were concerned and that some drastic action appeared to be necessary.

“Mr. Harrison suggested, that either orally or in writing, the Army Transport Service in Seattle for whom Griffiths & Sprague were doing most of their work be advised that this company was using the services of the Association and were not paying for them, while other companies in Seattle with

facilities to handle this business had equipment and services that were not being used, and request the Army's attitude in connection with the matter.

"After discussion, upon motion of Mr. Gallagher, seconded by Mr. Busch, the following resolution was unanimously adopted:

"Be It Resolved, That it be the recommendation of this Board that Mr. Foisie, president of the Association, go to Seattle as soon as possible and discuss the non-payment of Association assessments with Griffiths & Sprague and also discuss with the Army Transport Service authorities in Seattle the whole situation as outlined in Mr. Harrison's suggestion today, and

"Be It Further Resolved, That Mr. Foisie be given full authority to act by this Board." [176]

DEFENDANT'S EXHIBIT G

offered and ruling reserved Mar. 27, 1945.

March 12, 1943

To Special San Francisco Committee:

J. A. Lunny, W. P. Sexton, W. J. Bush, Thomas James.

Gentlemen:

The tonnage assessment of 2½¢ per ton is intended to provide income to cover the operations

of the Waterfront Employers Association of the Pacific Coast. At the present time this tonnage assessment is paid by those companies doing stevedoring work.

In California ports the entire stevedoring operation consists of moving cargo to and from first place of rest to ship's hold.

In Puget Sound this work is divided into two operations; one, handling cargo to and from first place of rest to ship's tackle; the other, to and from ship's tackle to ship's hold.

In addition, many men are secured from the hiring hall for the purpose of loading and unloading cars, piling cargo on lift boards, stacking same, and other work on the docks preparatory to the actual loading of ships.

We propose to collect on a man-hour basis for all men secured from the hall for any of the work described above. The sum of such collection to make up a total assessment of 21½c per ton for all cargo handled to and from ships in this district.

We request that the Coast Association recognize these facts and instruct the Washington Association to so collect from all employers, using men as heretofore described, in an equitable manner, and remit the proceeds to the Coast Association on a basis of 21½c per ton for all cargo handled to and from ships as already mentioned.

We would like the Coast Association to pass a

resolution instructing the Washington district to act accordingly.

Special Committee representing Employers of Washington appointed by Mr. Middleton.

R. C. CLAPP

S. STOCKING

WILLIAM SEMAR

F. E. SETTERSTEN [177]

DEFENDANT'S EXHIBIT H

offered and ruling reserved Mar. 27, 1945.

March 12, 1943

To Special San Francisco Committee — J. A. Lunny, W. P. Sexton, W. J. Bush, Thomas James.

Gentlemen:

The Washington employers believe that the expense of mainting the Coast Association should be borne by all those interested and receiving its benefits.

Presently this expense is borne entirely by those performing the stevedoring services.

We believe the ships should bear a share of this expense.

We propose that the Coast Association recognize that a tonnage tax against all cargo handled in and out of Pacific U. S. Ports is a standard port charge,

like pilotage, custom fees, fumigation, etc., and endeavor to arrange owners and agents using Pacific Coast Ports to agree and to establish this understanding as a fact.

This tax presently to be established at 1c per ton weight for all cargo loaded or discharged at any port and to be paid to the Coast Association by the agents or owners and the agents to be responsible for its collection.

If, due to war conditions, the exact weight cannot be ascertained, the agent shall assess against the vessel and pay to the association on the basis of tons handled from arrival draft and sailing draft of the vessel.

It should be understood that after this is in operation for a short period and all stevedoring tonnage taxes are being reported and paid, and the treasurer can compute the income of the Association in relation to its expenses that the stevedoring tonnage tax will be reduced in the amount that is justifiable.

Special Committee representing Employers of
Washington appointed by Mr. Middleton.

R. C. CLAPP

S. STOCKING

WILLIAM SEMAR

F. F. SETTERSTEN [178]

DEFENDANT'S EXHIBIT I.

Offered and Ruling Reserved Mar. 27, 1945.

Phone Exbrook 3913

Waterfront Employers Association
of the Pacific Coast
Financial Center Building
405 Montgomery Street
San Francisco, Cal.

March 25, 1943

Messrs. R. C. Clapp, S. Stocking, William Semar,
F. E. Settersten.

Gentlemen:

The undersigned have studied thoroughly your proposals of March 12th on assessments and submit our results for your further consideration and reply.

A meeting of the Coast Board will then be held and your entire committee will be invited and urged to attend to represent your Washington Association, especially the stevedore and terminal members; the expenses of your committee to be borne by the Coast Association.

These recommendations for your consideration:

Split Contracts:

Your all important proposal is that your members should be kept on a parity with the Coast. You are on such party except in the effect of the practice of split contracts at shipside on tonnage assessment. This committee is in full accord with your

committee that the dock stevedore or terminal operator who handles cargo between place of rest and shipside shall hereafter share with the ship stevedore in the $2\frac{1}{2}c$ per ton Coast Assessment. This would put your combined stevedore operation on a par with the practice of a single stevedore operation, hold to place of rest, which exists throughout the rest of the Coast (with the possible exception of some few operations in Portland). The division of assessment between stevedore and dock operator [179] should be proportionate to the two interests as you may locally work out, but our suggestion would be a standard split of $1\frac{1}{2}c$ from the ship stevedore, $1c$ from the dock stevedore or terminal company (including the public port authority where it handles cargo to shipside).

To carry out this sharing of the expense, the committee recommends that the ship's stevedore continue to pay his full assessment rate of $2\frac{1}{2}c$ per ton; and that arrangements be made for the dock operator to pay to the Association $1c$ per ton on all cargo which he handles in the split operation. The funds so received from the dock operators shall be paid, as and when received by the Association, to the ship's stevedore concerned in the particular operation upon which the payment is made. This arrangement should apply to Army, Navy and War Shipping Administration operations whenever the operations are split.

Cargo Carries the Assessment:

This committee shares with you the belief that

all who benefit should pay proportionately. But the basis of tonnage assessment is that the cargo carries the cost of Association services just as it carries all other costs of cargo-handling.

In the interest of keeping the assessment policy simple, it has been the uniform Coast practice from the beginning of the Association not to collect a tax from members for earloading, checker work or any other port labor operation. It seems undesirable to change that practice for the duration; but reconsideration will be given at the Coast meeting when you are present. [180]

Assessment Against Ship's Agent:

The undersigned committee believes, with the Coast Board, that a tax such as you propose be assessed against the ship's agent or shipowner is unwise. Primarily because it will be difficult if not impossible to collect such tax from the several Government departments who have contracts with our members.

Non-Members Always Assessed:

Non-member employers who get men from the dispatching hall pay a 3c per man-hour fee. We understand that you propose no change in this policy nor do we. But the public port terminals should be approached on their split-contract share.

Men from the hall for other than waterfront cargo-handling:

There are some few instances where men are supplied to member companies for work handling cargo in warehouses away from the water-

front. The Coast Board has underway a program for conserving our registered men for waterfront work rather than assessing a charge.

Enclosed is an outline which may serve to clarify the foregoing.

As soon after receipt of your comment on this letter as it is practicable, we shall be convening a Coast Board meeting with yourselves present for the purpose of completing our understanding.

Yours very truly,

W. J. BUSH

T. C. GREENE

THOMAS JAMES

JOSEPH A. LUNNY

W. T. SEXTON

Enclosure:

dh [181]

March 25, 1943

TYPES OF STEVEDORE OPERATIONS IN WASHINGTON PORTS

| | Tonnage Assessment |
|--|-----------------------|
| Between hold and place of rest—one operation (Standard price on the Coast)..... | 2½c |
| Between barge (or from water) and hold (Lumber pays the Association assessment on a M ft. basis, but collects on a 600 ft. basis)..... | 2½c |
| Between ship and car alongside..... | 2½c |
| Bulk cargo trimming gang—no dock men from hall | ½c |

Tonnage
Assessment

Ship gang of 10-12 men working against
gang of 4-6 men; or against lift truck
driver handling loads already built

Stevedore 1½c

Dock 1c

Note: Where there is no handling on dock (except alongside of ship by sling men) the ship stevedore pays 2½c per ton. Where cargo is handled on the dock, the dock stevedore or operator pays the stevedore 1c of the 2½c through the Association.

Stevedore pays the 2½c at all industrial docks.
Exhibit "C." [182]

DEFENDANT'S EXHIBIT J

Offered and Ruling Reserved Mar. 27, 1945.

April 19, 1943

Messrs. W. J. Bush, Thomas James, T. C. Greene,
Joseph Lunny, W. T. Sexton.

Gentlemen:

Responding to your letter of March 25, 1943.

We have been instructed by our membership that we cannot accept anything other than our proposal to you of March 12, without first submitting it to them for their approval. Therefore, we believe that your committee and our committee, should have a closer meeting of the mind before the meeting is

set up in San Francisco, which we understand we will be invited to attend.

With reference to your paragraph regarding "split contracts," we are not interested in being "kept on a parity with the Coast." We accept your statement that the Coast needs a sum of money equal to $2\frac{1}{2}c$ per ton for all cargo loaded or discharged on the Coast to pay the operating expenses of the Coast Association.

We are willing to cooperate in the collection of this sum of money, but we wish the manner of collection changed in this district. We wish the Coast Association to instruct the Washington Association to pay to Cosat Association the prevailing tonnage assessment on all cargo loaded or discharged in this district and to collect this revenue from all parties benefiting from the Association and authorizing our Washington Association to collect it in the manner our membership decides is equitable.

Referring to your paragraph "Cargo carries the assessment," we realize that this was a suitable basis when the ships carrying the freight paid the assessment. We feel that present conditions have materially changed and the method of collection should be made to suit such changed conditions. We note with interest that you agree with us "that all who benefit should pay proportionately." Surely you do not contend, as we infer from your letter, that the vessels, ship owners and ship operators and those people checking cargo and unloading cargo,

do not benefit by the fine work of the various Labor Relations Committees which the Coast Association manages.

The stevedoring companies in this district do not wish to act as collecting agents; rather, they want to be responsible only for their share of the 2½c. Our committee wishes to allocate the distribution [183] of the 2½c per ton on a man-hour basis, and yet you object to it merely on the ground that it never has been done that way. We cannot understand why the Coast Association should function free of charge for those firms who check cargo and unload cargo from cars to dock, and have those firms that load cargo to and from ships pay the way for them.

Referring to your paragraph "Assessment against ships' agent," we note that you believe it is unwise to assess the agent and/or owners. We believe that it is manifestly unfair not to do so. The only reason you offer is that it would be "Difficult, if not impossible, to collect such tax from the several Government departments who have contracts with our members."

The stevedores in this district do not collect the 2½c tax from the Army and Navy. It comes out of our own pockets.

We suggested a tonnage tax against the vessels. If this is not workable then why not set up membership dues and/or a flat fee per ship-sailing.

We suggest and request that the ship owners,

agents and operators, who organized, who manage, and who have continued this fine Association to contribute a justifiable amount of this 21½¢ per ton in any manner they see fit and in any amount they deem fair.

Special Committee Waterfront Employers of Washington Appointed by K. J. Middleton:

Messrs. R. C. Clapp, Chairman, Sam Stocking, Wm. Semar, F. E. Settersten.

Exhibit 2.

DEFENDANT'S EXHIBIT K

Offered and Ruling Reserved Mar. 27, 1945.

WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST

Financial Center Building
405 Montgomery Street
San Francisco, Calif.

May 14, 1943

Messrs. R. C. Clapp, Chairman, Sam Stocking, William Semar, F. E. Settersten, Special Committee Waterfront Employers of Washington.

Gentlemen:

The Director of the Coast Association recommend the following for your consideration to meet the proposals set forth in your letter of April 19th:

All members in your Association who are direct employers of labor on the dock will pay into your

Port Association treasury a man-hour assessment, the amount of which is to be worked out on a basis that provides for the dock work paying its fair share of the Association expense;

All members in your Association who are direct employers of longshore labor will continue to pay the Coast assessment of $2\frac{1}{2}c$ per ton covering cargo handled between sling and hold;

Assessments collected on a man-hour basis will at intervals be returned by the Port Association treasury to members paying sling to hold tonnage handled and these returns should effect a substantial reduction in the sling to hold assessment;

In the case of a vessel still under commercial operation, the Coast assessment will continue to be paid by the cargo.

It is believed such program meets your two-fold objective of reducing the tonnage assessment to your stevedore members and to eliminate the free ride for some of your members. [185]

The Directors of the Coast Association tender their support to your local Association in working out and effecting such program.

A full Coast Board meeting is called for May 27th. Your Committee is urged to attend in full. In addition, it will be appreciated if you will invite the small Port stevedores in your district to be represented by someone of their selection.

It is requested that your Committee meet the undersigned San Francisco Committee on the day

before the Coast meeting, May 26th at 10:00 a.m. for the purpose of effecting a mutually satisfactory understanding on the basis of which there can be a joint recommendation to the representatives from all ports and to the Coast Board of Directors.

Yours very truly,

Committee on Relations with Seattle

W. J. BUSH

T. C. GREENE

THOMAS JAMES

J. A. LUNNY

W. T. SEXTON."

Exhibit 3

DEFENDANT'S EXHIBIT L

Admitted May 17, 1945.

Resolution Adopted by Board of Directors of
Waterfront Employers Association of the Pa-
cific Coast on November 10, 1943.

"Be it resolved, That it be the recommendation of this Board that a study be made of the advisability of requesting the Washington Association to remove from its membership those companies who are delinquent in paying tonnage assessments to the Coast Association and should such expulsion be accomplished and the Association be compelled to furnish men through the hiring hall to such delinquent members, that a man-hour charge be levied in lieu of a tonnage assessment on the same basis as non-members using men out of the hiring hall; that after such study has been made, that a report be made back to this Board." [187]

DEFENDANT'S EXHIBIT M

Admitted May 17, 1945.

Copy of Resolution Adopted November 24, 1942,
by the Board of Trustees of Waterfront Em-
ployers of Washington

Resolution Adopted: That we agree with the
Coast Board that all delinquencies should be paid.

Resolution Adopted: Moved and seconded that
all delinquencies by stevedores be paid up to
January 1, 1942.

Resolution Adopted: It is hereby moved that
this Board recommend to the stevedores and those
handling cargoes over docks and to and from cars,
that they endeavor to work out a plan for pay-
ment on a man hour basis of all men ordered
from longshore and checker halls that will be
equivalent to two and one-half cents per ton on all
cargo moved by water in this port. This to be retro-
active to January 1, 1942. [188]

DEFENDANT'S EXHIBIT M-1

Admitted May 17, 1945.

Minutes of Meeting of Board of Trustees
Waterfront Employers of Washington

10:45 a. m.—November 24, 1942

Present: F. E. Settersten, M. J. Webber.

Tonnage Assessments—Chairman reviewed pro-
ceedings of the Coast Board meeting on November

11 and 12. Minutes of those meetings were distributed to the members.

The following resolutions were adopted:

1. That we agree with the Coast Board that all delinquencies should be paid.

2. That all delinquencies by stevedores be paid up to January 1, 1942.

3. This Board recommends to the stevedores and those handling cargoes over docks to and from cars, that they endeavor to work out a plan for payment on a man-hour basis of all men ordered from longshore and checker halls that will be equivalent to two and one-half cents per ton on all cargo moved by water in this district. This to be retroactive to January 1, 1942.

4. It is strongly recommended and urged that the Coast Board consider approaching member companies to effect a method by which those member shall contribute to the support of the Coast Association. It is believed that member companies are jointly concerned with stevedoring companies and dock operators in perpetuating the Coast Association and, in equity, should bear a reasonable share of the expense. [189]

DEFENDANT'S EXHIBIT N

Admitted May 17, 1945.

Waterfront Employers of Washington
Alaska Building
Seattle, Washington
Main 8448

December 11, 1942

Messrs. R. C. Clapp, F. E. Settersten, R. A. Armstrong.

Gentlemen:

At the stevedores' meeting on Nov. 24, 1942, the following resolutions were moved and seconded:

1. Be It Resolved, by the members of the Association of Washington Stevedores, and stevedores of the Northwest, in meeting assembled, that they endorse the action taken by the Board of Trustees of the Waterfront Employers of Washington on Nov. 24, 1942, with reference to Coast Association tonnage assessments as set forth hereunder, with the stipulation that we do not acknowledge any liability as per Memorandum Agreement dated May 9, 1940, between the various Waterfront Employers Associations and the various stevedoring members for the payment of tonnage tax of non-member vessels, which include vessels operated by the Army, Navy and other Government agencies.

2. Be It Resolved, that the president of Waterfront Employers of Washington appoint a committee of stevedore members of the Waterfront Employers of Washington to confer with the dock

operators to work out a plan to submit to the Waterfront Employers of Washington to effect the purpose of the foregoing resolution.

Following the instructions contained in the second resolution I am asking you to serve as that committee.

Mr. W. F. Varnell will be glad to arrange a meeting with a committee representing the dock operators.

May I remind you of the position at present:

1. The Trustees of the Waterfront Employers of Washington passed a resolution: "That we agree with the Coast Board that all delinquencies should be paid."

2. The stevedores have endorsed the position of the local Board of Trustees.

3. The position of the Coast Board is that stevedores are liable for the payment of the $2\frac{1}{2}\%$ tonnage assessment. The Coast Board also adopted a recommendation that the Northern district members forward their recommendations on dividing tonnage assessments between dock operators and stevedores where possible. [190]

As to the stevedores obtaining relief from those doing the work on the dock.

1. The stevedores agree to pay to Jan. 1, 1942 without relief.

2. As from Jan. 1, 1942 onward, the effort of your committee will be to secure agreement with

dock operators and stevedore companies doing work on the docks for an equitable contribution to the 21½c ton assessment.

It is hoped in the interests of all concerned that you will succeed in finding a satisfactory formula to reach agreement for dividing the amount of the assessment between ship and dock work.

Regarding the future the local Board of Trustees passed a resolution reading:

“It is strongly recommended and urged that the Coast Board consider approaching member companies to effect a method by which those members shall contribute to the support of the Coast Association. It is believed that member companies are jointly concerned with stevedoring companies and dock operators in perpetuating the Coast Association and, in equity, should bear a reasonable share of the expenses.”

It is hoped that some such arrangement can be made but until the situation is cleared by payment of tonnage assessments to date, it seems unlikely that the Coast Board will act.

In these busy times it may assist, if you so desire, to be represented by an alternate from your respective firms.

Yours very truly,

K. J. MIDDLETON

KJM:k [191]

DEFENDANT'S EXHIBIT O

Admitted May 17, 1945.

Employer

Port..... Date.....194.....

Ship..... Dock.....

This is to advise you that on the tonnage handled by us for the U. S. Army up until Jan. 31st, 1943, upon which U. S. tonnage assessment has been paid, we will pay the Wa.F.E. of the Pac. Coast the tonnage assessment of $2\frac{1}{2}c$ per ton on a volume of tonnage to be determined. Payment to be made in approximately equal installments of thirty, sixty and ninety days from this date.

Also from Feb. 1st, 1943, onward, we will pay the tonnage assessments currently at the rate set by the Coast Assn.

Signed.....

DEFENDANT'S EXHIBIT P

Rejected May 17, 1945.

Seattle, Washington

Circular No. 1200

December 3, 1937

To the Members of the

Waterfront Employers of Seattle

Gentlemen:

For your ready reference we review below rates for tonnage and payroll assessments, and instructions relative to reporting:

The rates of assessments are as follows:

Off-shore and Intercoastal Cargo

General Cargo2c per manifest ton

Lumber2c per M. ft.

Bulk Cargo Dry4/10c per ton

(Bulk fluid cargo exempt)

Trans-shipped Cargo $\frac{1}{2}$ rate of foregoing
(each vessel)

Coastwise Cargo

$\frac{1}{2}$ off-shore rates paid in and out. When handled by crew and longshoremen, tonnage to be taxed is to be calculated proportionate to man hours of longshoremen and crew actually handling cargo.

Operators who are not members of either individual port associations or the Coast Association:

2 $\frac{1}{2}$ c per man per hour (or at rates noted above)

Payroll Assessments

The payroll assessment will be three-fourths ($\frac{3}{4}$) of one per cent. (Payrolls equal total hours worked multiplied by straight time rates). This applies to stevedores, dock companies, steamship company performing their own services and all other services securing men from the Longshore Joint Dispatching Hall.

Fluid Bulk Cargo

All fluid bulk cargo is exempt from assessment, regardless of trade or route. But this tonnage should be shown on the Monthly Report for statistical purposes.

How they are to be reported and paid

All payroll assessments in this district are to be paid to the local treasurer. Tonnage assessments from all members, who have indicated their intention of reporting through the local office, are to be paid to the local treasurer. [193]

These should be accompanied by monthly current report on blanks furnished, which should reach this office in sufficient time to enable us to forward them to San Francisco by the 20th of the month following the month the report covers.

Our members who are reporting direct to San Francisco are requested to have their reports reach that office by the 20th of each month for the previous month.

Handling Charge Defense Fund

This assessment is one that is being collected by the Coast Association, at the request of the joint conferences. It is a levy of 1c per ton on all off-shore and intercoastal cargo, and ordinary dry bulk. Lumber, logs, bulk grain, bulk oil, and all coastwise cargo and cargo to British Columbia, Alaska and Hawaii is exempt.

A proper classification and distribution of tonnage on the "Monthly Report of Tonnage" form will take care of this.

Non-Member Lines or Steamers

Procedure for handling non-member assessments:

The member stevedores in the several ports are requested by the Coast Association to accept re-

sponsibility for the collection of the tonnage and defense fund assessment for non-member steamship lines, tramps, etc.

Non-member companies may either pay on a $2\frac{1}{2}$ c per ton man-hour basis or on the same basis as member companies. In either event, they are expected to pay 1c Coast Defense Fund.

The stevedores are not required to report tonnage of member lines.

Yours very truly,

W. C. DAWSON,

Treasurer. [194]

DEFENDANT'S EXHIBIT Q

Rejected May 17, 1945.

Waterfront Employers of Seattle

1301 Alaska Building

Seattle

Circular No. 1201.

June 18, 1938

To the members of the

Waterfront Employers of Seattle

Gentlemen:

Effective June 1, 1938 the rates of assessment on cargo will be as follows:

Off-shore and Intercoastal Cargo

General Cargo $2\frac{1}{2}$ c per manifest ton

Lumber $2\frac{1}{2}$ per M. ft.

Bulk Cargo Dry5/10c per ton

(Bulk fluid cargo exempt)

Trans-shipped Cargo $\frac{1}{2}$ rate of foregoing
(each vessel)

Coastwise Cargo

1/2 off-shore rates paid in and out. When handled by crew and longshoremen, tonnage to be taxed is to be calculated proportionate to man hours of longshoremen and crew actually handling cargo.

Operators who are not members of either individual port associations or the Coast Association:

3c per man per hour (or at rates as noted above)

Payroll Assessments

Effective July 1, 1938, the payroll assessment will be one (1) percent, with a minimum of \$5.00 per month and covers longshore, dock and checker payrolls. (Payrolls equal total hours worked multiplied by straight time rates). This applies to stevedores, dock companies, steamship companies performing their own services and all other services securing men from the Longshore Joint Dispatching Hall.

Fluid Bulk Cargo

All fluid bulk cargo is exempt from assessment, regardless of trade or route. But this tonnage should be shown on the Monthly Report for Statistical purposes. [195]

How they are to be reported and paid

All payroll assessments in this district are to be paid to the local treasurer. Tonnage assessments from all members, who have indicated their intention of reporting through the local office, are to be paid to the local treasurer, and should be accompanied by tonnage report blanks furnished, which

should reach this office in sufficient time to enable us to forward them to San Francisco by the 20th of the month following the month the report covers.

Our members who are reporting direct to San Francisco are requested to have their reports reach that office by the 20th of each month for the previous month.

Handling Charge Defense Fund

This assessment is one that is being collected by the Coast Association, at the request of the joint conference. It is a levy of 1c per ton on all off-shore and intercoastal cargo, and ordinary dry bulk. Lumber, logs, bulk grain, bulk oil, and all coastwise cargo and cargo to British Columbia, Alaska and Hawaii is exempt.

A proper classification and distribution of tonnage on the "Monthly Report of Tonnage" form should be made to conform to the above.

Non-Member Lines or Steamers

Procedure for handling non-member assessments:

The member stevedores in the several ports are requested by the Coast Association to accept responsibility for the collection of the tonnage and defense fund assessment from non-member steamship lines, tramp, etc.

Non-member companies may either pay a 3c per man-hour basis or on the same basis as member companies. In either event, they are expected to pay 1c Coast Defense Fund.

The stevedores are not required to report tonnage of member lines.

Yours very truly,
W. C. DAWSON,
Treasurer. [196]

DEFENDANT'S EXHIBIT R

Rejected May 17, 1945.

Waterfront Employers of Seattle
1301 Alaska Building
Seattle

July 27, 1939

Circular No. 1202.

To the Members of the Waterfront
Employers of Seattle

Gentlemen:

Effective June 1, 1938 the following rates of assessment on cargo became effective:

Off-shore, Intercoastal and Alaska Cargo:

General Cargo2½c per manifest ton

Lumber2½ per M. ft.

Bulk Cargo Dry5/10c per ton

(Bulk Fluid Cargo exempt)

Trans-shipped Cargo½ rate of foregoing
(each vessel)

Coastwise Cargo:

½ off-shore rates paid in and out. When handled by crew and longshoremen, tonnage to be taxed is to be calculated proportionate to man hours of longshoremen and crew actually handling cargo.

Fluid Bulk Cargo:

All fluid bulk cargo is exempt from assessment, regardless of trade or route. But this tonnage should be shown on the Monthly Report for statistical purposes.

Operators who are not members of either individual port associations or the Coast Association:

3c per man per hour (or at rates as noted above).

Payroll Assessments:

Effective July 1, 1938, the payroll assessment was fixed at one (1) percent, with a minimum of \$5.00 per month and covers longshore, dock and checker payrolls. (Payrolls equal total hours worked multiplied by straight time rates). This applies to stevedores, dock companies, steamship companies performing their own services and all other services securing men from the Longshore Joint Dispatching Hall. [197]

How they are to be reported and paid:

All payroll assessments in this district are to be paid to the local treasurer. Tonnage assessments from all members, who have indicated their intention of reporting through the local office, are to be paid to the local treasurer, and should be accompanied by tonnage report blanks furnished which should reach this office in sufficient time to enable us to forward them to San Francisco by the 20th of the month following the month the report covers.

Our members who are reporting direct to San Francisco are requested to have their reports reach

that office by the 20th of each month for the previous month.

Non-Member lines or Steamers:

Procedure for handling non-member assessments:

The member stevedores in the several ports are requested by the Coast Association to accept responsibility for the collection of the tonnage and defense fund assessment for non-member steamship lines, tramps, etc.

Non-member companies may either pay on a 3c per man-hour basis or on the same basis as member companies. In either event, they are expected to pay 1c Coast Defense Fund, as not on page 3.

The stevedores are not required to report tonnage of member lines.

Handling Charge Defense Fund:

This assessment is one that is being collected by the Coast Association, at the request of the Joint Conference. Since May 1, 1939, and at the present time, the Handling Charge Defense Fund assessment is 1c per ton on all off-shore cargo and ordinary dry bulk.

All coastwise cargo and cargo to British Columbia, Alaska and Hawaii is exempt.

The following commodities are also exempt when loaded from or discharged into cars, bunkers, or other shore facility, direct by ship's tackle or mechanical device:

| | |
|-------------------|-----------------------|
| Concentrates | Fluorspar |
| Grain | Gravel |
| Lumber | Gypsum |
| Logs | Linseed |
| Bulk Oil—(Animal) | Magnesite |
| (Fish) | Nitrate Soda |
| (Petroleum) | Phosphate Rock |
| (Vegetable) | Phosphate Acid Am- |
| Ore | monium |
| Piling | Potash |
| Scrap Iron | Salt |
| Scrap Steel | Salt Cake |
| Bones | Sand |
| Chalk | Silica |
| Clay | Soda Ash |
| Coal | Stone, Crushed |
| Coke | Sulphur & Vermiculite |
| Copra | |

A proper classification and distribution of tonnage on the "Monthly Report of Tonnage" form should be made to conform to the above.

Note: This circular consolidates all former rate assessment circulars.

Your very truly,

WATERFRONT EMPLOYERS
OF SEATTLE,

W. C. DAWSON,

Treasurer. [199]

DEFENDANT'S EXHIBIT S

Rejected May 17, 1945.

Waterfront Employers of Washington
 1301 Alaska Building
 Seattle

February 26, 1940

Circular No. 1203

To the Members of the

Waterfront Employers of Washington

Effective February 1, 1940 the following rates
 of assessment on cargo became effective:

Off-shore, Intercoastal and Alaska Cargo:

General Cargo.....2½c per manifest ton

Lumber2½c per M. ft

Bulk Cargo Dry5/10c per ton

(Bulk Fluid Cargo exempt)

Trans-shipped Cargo½ rate of foregoing
 (each vessel)

Coastwise Cargo:

½ off-shore rates paid in and out. When handled
 by crew and longshoremen, tonnage to be taxed is
 to be calculated proportionate to man hours of
 longshoremen and crew actually handling cargo.

When ocean revenue is based on weight, 2000#
 equals 1 ton.

When ocean revenue is based on measurement,
 40 cu. ft. equals 1 ton.

Fluid Cargo:

All fluid bulk cargo is exempt from assessment,
 regardless of trade or route. But this tonnage

should be shown on the Monthly Report for statistical purposes.

Payroll Assessments:

The payroll Assessment is one (1) percent, with a minimum of \$5.00 per month and covers long-shore, dock and checker payrolls. (Payrolls equal total hours worked multiplied by straight time rates.) This applies to stevedores, dock companies, steamship companies performing their own services and all other services securing men from the Joint Dispatching Halls. [200]

How they are to be reported and paid:

All payroll assessments in this district are to be paid to local treasurer.

Tonnage assessments from all members, who are reporting through the local office, are to be paid to the local treasurer, and should be accompanied by tonnage report blanks furnished which should reach this office in sufficient time to enable us to forward them to San Francisco by the 20th of the month following the month the report covers.

Our members who are reporting direct to San Francisco are requested to have their reports reach that office by the 20th of each month for the previous month.

Non-members of either port associations or the Coast Association:

Effective February 15, 1940.

At the meeting of the Coast Board of Directors in San Francisco on February 15, last, it was the

recommendation of the Stevedore Committee that the member contracting stevedore or steamship lines performing stevedore operations, or contracting for stevedoring work for non-members, assume the responsibility for collecting the tonnage assessment from non-members on the basis as heretofore noted.

That in the event of failure to get an acceptance of responsibility for the payment of the tonnage tax from the non-member vessel operator, a man hour assessment of 4c per hour be authorized, collection of which will be the responsibility of the member contracting stevedore or steamship lines, and that all member contracts for stevedoring such non-member vessels shall provide for the levy and collection of the same.

It is the further responsibility of the stevedoring company to procure from non-members statement of tonnage loaded or discharged for them and report these figures separately by steamer to the local treasurer.

The stevedores are not required to report tonnage of member lines.

W. C. DAWSON,

Treasurer. [201]

DEFENDANT'S EXHIBIT T

Rejected May 17, 1945.

Waterfront Employers of Washington
1301 Alaska Building
Seattle

October 1, 1940

Circular No. 1204

(Superseding all previous assessment circulars)

Assessment Rates

Off-shore, Intercoastal and Alaska Cargo:

General Cargo2½c per ton

Lumber2½c per M. ft.

Bulk Cargo, Dry5/10c per ton

Bulk Cargo, FluidExempt

Trans-shipped Cargo½ rate of foregoing
(each vessel)

Coastwise Cargo:

½ off-shore rates paid in and out. When handled by crew and longshoremen, tonnage to be taxed is to be calculated proportionate to man-hours of longshoremen and crew actually handling cargo.

Fluid Bulk Cargo:

All fluid bulk cargo is exempt from assessment, regardless of trade or route. But this tonnage should be shown on the Monthly Report for statistical purposes.

Method of computing the Ton:

When ocean revenue is based on weight, 2000# equals 1 ton.

When ocean revenue is based on measurement, 40 cu. ft. equal 1 ton.

How Assessments are to be reported and paid:

Tonnage assessments from members, who are reporting through the local office are to be paid to the local treasurer, and should be accompanied by tonnage report blanks furnished, which should reach this office in sufficient time to enable us to forward them to San Francisco by the 20th of the month following the month the report covers. [202]

Our members, who are reporting direct to San Francisco, are requested to have their reports reach that office by the 20th of each month for the previous month.

Non-Members of either Port Associations or the Coast Association:

It is the responsibility of member contracting stevedores or steamship lines doing contract stevedoring, to collect tonnage assessments from non-member operators on a tonnage basis only, at rates noted in this bulletin.

It is the further responsibility of the stevedoring company to procure from non-members statement of tonnage loaded and discharged for them and report to the local treasurer on Monthly Tonnage Report Forms furnished; each steamer separately.

The stevedores are not required to report tonnage of member lines.

Payroll Assessments:

| | |
|-----------------------------------|--------|
| Longshore, dock and checker | 1% |
| Minimum | \$5.00 |

Payrolls equal total hours worked multiplied by straight time rates.

This assessment applies to stevedores, dock companies and steamship companies performing their own services, and all other services securing men from the Joint Dispatching Halls.

How they are to be reported and paid:

All payroll assessments in this district are to be paid to the local treasurer.

W. C. DAWSON,
Treasurer. [203]

DEFENDANT'S EXHIBIT U

Rejected May 17, 1945.

Waterfront Employers of Washington
1301 Alaska Building
Seattle

January 7, 1941

Circular No. 1205—Effective January 1, 1941

(Superseding all previous Assessment circulars)

Assessment Rates

Off-shore, Intercoastal and Alaska Cargo:

| | |
|---------------------|----------------|
| General Cargo | 2½c per ton |
| Lumber | 2½c per M. ft. |

| | |
|---------------------------|--|
| Bulk Cargo, Dry | 5/10c per ton |
| Bulk Cargo, Fluid | Exempt |
| Trans-shipped Cargo | 1/2 rate of foregoing (each vessel) |

Coastwise Cargo:

1/2 off-shore rates paid in and out. When handled by crew and longshoremen, tonnage to be taxed is to be calculated proportionate to man-hours of longshoremen and crew actually handling cargo.

Fluid Bulk Cargo:

All fluid bulk cargo is exempt from assessment, regardless of trade or route. But this tonnage should be shown on the Monthly Report for statistical purposes.

Method of computing the Ton:

When ocean revenue is based on weight, 2000# equal 1 ton.

When ocean revenue is based on measurement, 40 cu. ft. equal 1 ton.

How Assessments are to be reported and paid:

Tonnage assessments from members, who are reporting through the local office, are to be paid to the local treasurer, and should be accompanied by tonnage report blanks furnished, which should reach this office in sufficient time to enable us to forward them to San Francisco by the 20th of the month the report covers. [204]

Our members, who are reporting direct to San Francisco, are requested to have their reports reach that office by the 20th of each month for the previous month.

Non-Members of either Port Associations or the Coast Association:

It is the responsibility of member contracting stevedores or steamship lines doing contract stevedoring, to collect tonnage assessments from non-member vessel operators on a tonnage basis only, at rates noted in this bulletin.

It is the further responsibility of the stevedoring company to procure from non-members statement of tonnage loaded or discharged for them and report to the local treasurer on Monthly Tonnage Report Forms furnished; each steamer separately.

The stevedores are not required to report tonnage of member lines.

Payroll Assessment: (Authorized by the Board of Trustees January 6, 1941)

| | |
|---------------------------------|--------|
| Total payrolls (Longshore, dock | |
| and checker | 3/4% |
| Minimum | \$5.00 |

This assessment applies to stevedores, dock companies and steamship companies performing their own services, and all other services securing men from the Joint Dispatching Halls.

How they are to be reported and paid:

All payroll assessments in this district are to be paid to the local treasurer.

W. C. DAWSON,

Treasurer. [205]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD ON APPEAL AND DOCKETING
ACTION IN U. S. CIRCUIT COURT OF
APPEALS

The parties having stipulated in writing,

It Is Ordered that the time for filing the record on appeal herein and for docketing the above-entitled action with the United States Circuit Court of Appeals for the 9th Circuit be and the same is hereby extended to include the period ending 90 days from the date of the first notice of appeal herein given on behalf of the defendant.

Done in Open Court this 15th day of August, 1946.

/s/ LLOYD L. BLACK,

U. S. District Judge.

Presented by:

DAVID O. HAMLIN,

Of Counsel for Defendant.

Approved as to form and notice of presentation waived:

EDWARD G. DOBRIN,

Of Counsel for Plaintiff.

[Endorsed]: Filed Aug. 15, 1946. [206]

[Title of District Court and Cause.]

STATEMENT OF POINTS

Comes now the defendant-appellant, Griffiths and Sprague Stevedoring Company, Incorporated, and states the following as the points upon which it intends to rely in the appeal taken to the Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause:

1. The defendant-appellant is not liable for the payment of dues to plaintiff-appellee at the rate of 2½ cents per ton, because all cargo upon which such dues are sought to be collected was for the account of the United States Army under contracts between defendant-appellant and the United States of America and, in consequence, the collection of such dues from defendant-appellant is contrary to public policy and void because of its tendency to add to the cost of public contracts.

2. The defendant-appellant is not liable for the payment of dues to plaintiff-appellee in any sum whatsoever because defendant-appellant is only an Associate Member of plaintiff-appellee corporation, and the Articles of [207] Incorporation and By-Laws of plaintiff-appellee do not authorize or permit levy or collection of dues from an Associate Member.

3. The defendant-appellant is not liable for the payment of dues to plaintiff-appellee in any sum whatsoever because defendant-appellant is only an Associate Member of plaintiff-appellee corporation,

and as such member can, at most, be subjected to liability for payment of dues only on a basis which applies uniformly to all Associate Members. The program of plaintiff-appellee for collection of dues from defendant-appellant does not apply uniformly to all Associate Members of plaintiff-appellee corporation and is, therefore, invalid.

4. The defendant-appellant is not liable for the payment of dues to plaintiff-appellee in any sum whatsoever because the By-Laws of plaintiff-appellee provide that its membes, by majority vote, establish a maximum rate for dues and assessments as a condition precedent to the adoption of any resolution by its Board of Directors relative to such dues or assessments, and no such maximum rate has ever been so established by a majority of such members.

5. The defendant-appellant is not liable for the payment of dues to plaintiff-appellee under any contract, express or implied in fact or law, because no such contract for payment of the dues sought to be collected in this action has at any time been in existence.

6. The defendant-appellant is not liable for the payment of any dues which plaintiff-appellee seeks to collect in this suit because plaintiff-appellee has sought to compel payment thereof by threats of economic retaliation against defendant-appellant in the event of its refusal to pay the [208] amounts demanded, and such conduct on the part of plaintiff-appellee is so contrary to public policy as to

make its claim against defendant-appellant unenforceable, and any alleged agreement of defendant-appellant with respect thereto wholly void or at least voidable at the election of defendant-appellant.

7. The defendant-appellant is not liable for the payment of any dues to plaintiff-appellee because the entire program of plaintiff-appellee seeks to collect, in the guise of dues, a so-called "tonnage tax" on all cargo entering or leaving ports on the West Coast of the United States, whether carried by or for the account of members of plaintiff-appellee, and is monopolistic in tendency and is an unlawful interference by plaintiff-appellee with interstate and foreign commerce.

/s/ McMICKEN, RUPP &
SCHWEPPE

/s/ J. GORDON GOSE

/s/ EDWARD M. HAY

/s/ DAVID O. HAMLIN

Attorneys for Defendant-
Appellant.

Copy received Aug. 22, 1946.

BOGLE, BOGLE & GATES.

[Endorsed]: Filed. Aug. 22, 1946. [209]

[Title of District Court and Cause.]

ORDER DIRECTING INCLUSION OF ORIGINAL EXHIBITS Nos. 4, 28, 35, 37, 38, 39, 40 AND 45 IN RECORD ON APPEAL

The parties having stipulated in writing and said stipulation being filed herein,

It Is Ordered That the originals of Exhibits 4, 28, 35, 37, 38, 39, 40 and 45 be included by the Clerk of this Court in the record on appeal of this cause to the Circuit Court of Appeals, 9th Circuit, in lieu of copies of said exhibits and in lieu of any portions of said exhibits heretofore designated by the parties.

Done in Open Court this 18 day of September, 1946.

LLOYD L. BLACK,

U. S. District Judge.

Presented by:

DAVID O. HAMLIN,

Of Counsel for Defendant.

Approved as to form and notice of presentation waived:

EDWARD G. DOBRIN,

Of Counsel for Plaintiff.

[Endorsed]: Filed Sept. 18, 1946. [210]

[Title of District Court and Cause.]

DEFENDANT'S DESIGNATION OF PORTIONS OF RECORD DESIRED ON APPEAL

Comes Now the defendant and appellant herein, Griffiths and Sprague Stevedoring Company, Incorporated, a corporation, and designates the following portions of the record to be included in the record on appeal to the United States Circuit Court of Appeals for the 9th District:

1. The transcript of testimony taken at the trial.
2. Plaintiff's complaint (No. 1).
3. Defendant's answer (No. 8).
4. Findings of Fact and Conclusions of Law (No. 41).
5. Judgment (No. 42).
6. Supersedeas Bond (No. 46).
7. Notice of Appeal (No. 47).
8. Order approving Bond (No. 50).
9. Order extending time for Filing Record and Docketing on Appeal.
10. Exhibits 1, 3A, 5 to 25 inclusive, 32, 33, 36 and the following portions of Exhibit 37:
Page 1; Sheet #2 and Sheet #5, together with the following portions of Exhibit 38:

Page 1, 2, 4 and Item J Page 5, Pages 14 through

18 inclusive; [211] together with the following portions of Exhibit 39:

Page 1; Page 2 except Paragraphs D and E; Page 5, Paragraphs P and Q; Page 13 through 20 inclusive; Page 23,

and Exhibits 41, 42, 43 and 44; together with Exhibits A, B, C, D, E, F, L, M, M1, N, O, all of the foregoing being exhibits admitted in evidence at the trial hereof, and together with Exhibits G, H, I, J, and K, being exhibits offered in evidence by defendant and upon which the Court reserved ruling, together with Exhibits P, Q, R, S, T and U, being exhibits offered by defendant and rejected by the Court.

11. Appellant's statement of points.

12. Appellant's designation of portions of record to be included upon appeal.

McMICKEN, RUPP &

SCHWEPPE,

J. GORDON GOSE,

EDWARD M. HAY,

DAVID O. HAMLIN,

Attorneys for Defendant
(Appellant).

Copy received Aug. 22, 1946.

BOGLE, BOGLE & GATES.

[Endorsed]: Filed Aug. 22, 1946. [212]

[Title of District Court and Cause.]

PLAINTIFF'S DESIGNATION OF
ADDITIONAL PORTIONS OF RECORD

Comes now the plaintiff, Waterfront Employers Association of the Pacific Coast, a corporation, and designates the following additional portions of the record, proceedings and evidence to be contained in the record on appeal:

1. Plaintiff's Request for Admission Under Rule 36 of the Federal Rules of Civil Procedure (13).

Omit: Requests Nos. 10, 11 and 33 and all Exhibits thereto.

2. Amended Statement of Defendant with Respect to Plaintiff's Request for Admissions Under Rule 36 (22).

Omit: Paragraph IV.

3. Answer to Written Interrogatories Numbers 1 to 5 Propounded by Plaintiff (26).

Omit: All Exhibits thereto.

4. Answer to Written Interrogatories Numbers 6 to 15 Propounded by Plaintiff (20).

Omit: Interrogatories Nos. 10, 11, 12(d), 13 and 14 and answers thereto.

5. Exhibits 2, 4, 28, 30, 31, 34, 35, 45, 46.

Exhibit 37—Omit only:

Pages 1A, 1B, 1C, 1D except paragraph 14, 1F, 1G, and paragraphs 17(b), (c), (d) of page 1E.

Sheets Nos. 3 except paragraph K, 4 except paragraphs K and N. [213]

Change Orders A, B.

Supplemental Agreements, D, E, F.

Exhibit 38—Omit only:

Pages 3, 5 except paragraph J, 6 except paragraph R, 7 except paragraphs Z and AA, 8, 9 except paragraph 6, 11, 12, 13 except paragraph 13 and paragraphs 8, 9(b), (c), (d) from page 10.

Supplemental Agreement A.

Exhibit 39—Omit only:

Pages 3, 4, 6, 7, 8, 9, 10 except paragraph 6, 11, 12, paragraphs D and E from page 2, paragraphs S, T and U from page 5, paragraphs 8, 9(b) and 10 from page 11.

Supplemental Agreement B.

Exhibits 40—Omit only:

Letter September 2, 1944; letter September 11, 1944.

From Part II paragraphs 3, 4, 5(a), (b).

From Part I paragraphs 3, 4(a), (b), (d), (e), (f), (g), 5 to 19 both inclusive, 21(a), (b), (c), 22, 23(b).

6. This designation.

BOGLE, BOGLE & GATES,
EDWARD G. DOBRIN,
Attorneys for Plaintiff.

Copy received this 29 day of August, 1946.

McMICKEN, RUPP &
SCHWEPPE,
J. GORDON GOSE,
EDW. M. HAY and
DAVID O. HAMLIN,
Attorneys for Defendant.

[Endorsed]: Filed Aug. 29, 1946. [214]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK OF U. S. DIS-
TRICT COURT TO TRANSCRIPT OF
RECORD ON APPEAL

United States of America,
Western District of Washington—ss

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 214, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above entitled cause as is required by designation of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same, together with the reporter's transcript of testimony and proceedings constitute the record on appeal herein from the judgment of said United States District Court for

the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit: [215]

Clerk's fees for making record, certificate or return:

| | |
|-----------------------|---------|
| 38 Pages at 40c..... | \$15.20 |
| 178 Pages at 10c..... | 17.80 |
| (copies furnished) | |
| Appeal Fee | 5.00 |
| | <hr/> |
| Total | \$38.00 |

I hereby certify that the above amount has been paid to me by the attorneys for the appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 30 day of Sept., 1946.

[Seal]

MILLARD P. THOMAS,

Clerk.

By /s/ TRUMAN EGGER,

Chief Deputy Clerk. [216]

District Court of the United States
Western District of Washington
Northern Division

Civil Action No. 895

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST, a corporation,
Plaintiff,

vs.

GRIFFITHS and SPRAGUE STEVEDORING
COMPANY, INCORPORATED, a corpora-
tion,
Defendant.

TRANSCRIPT OF TESTIMONY

The Court: Now, we will take up the case of the Waterfront Employers' Association. Counsel, you may proceed.

Mr. Dobrin: If the Court please, I don't intend in this opening statement to make a detailed statement because it is my present plan, at least in the offering of testimony in the way of exhibits, to offer them in a chronological order so that the story in this case will unfold; and I am not going in the opening statement to go through all that process.

The Court: I have read your trial brief, and I have the benefit of that. I haven't encountered any trial brief by defendant.

Mr. Gose: I have one here, your Honor.

The Court: You have it now?

Mr. Gose: Yes.

The Court: Of course, I haven't read it yet.

Mr. Gose: Would you like to have me hand it to you at this time.

The Court: Very well. Then I can read it, maybe, this noon.

Mr. Gose: Your Honor, the first forty pages of that trial brief are really a chronological statement of the facts of the case, as we deem them to be material, setting out in chronological order for the convenience of the Court the various items which we believe will be introduced in evidence, most of which are already in this record, but in a rather jumbled form as far as chronological location is concerned. That has been prepared in that form so that you may have in sequence and under one cover those items which we think are [1*] material.

The Court: I think my statement to counsel, in the absence of any defendant's trial brief, that the problem so far was puzzling to me, is a statement that defendants must have anticipated I would make; otherwise, I would not be confronted with a 69-page trial brief supplementing a 36-page trial brief which I have just finished reading. I say that in my defense. At least, however simple the problem is to counsel on each side, they have anticipated that it would not be simple for me.

Mr. Dobrin: Well, if I may take the liberty of disagreeing with your Honor, it was for the purpose of putting everything in convenient form rather than offering something that would——

The Court: (Interposing) I appreciate very

* Page numbering appearing at foot of page of original Reporter's Transcript.

much comprehensive trial briefs, but I will let you know you don't need to apologize at the present moment. At least, without the benefit of the defendant's trial brief, I feel there is quite a problem.

Mr. Dobrin: In view of that fact that your Honor has read the trial memorandum, I think I can conserve time by merely making this statement, that, as it appears from this memorandum, the plaintiff brings this suit against one of its members to recover the tonnage assessment which is levied for the support and maintenance of the plaintiff. The testimony will show the levying of the assessment, will show the amount due under the assessment, and when we have done that, we conceive that we are entitled to judgment for the amount shown. Therefore, presumably, the case—the [2] further presentation will revolve around the asserted defense, affirmative defense of the defendant in connection with that showing.

Now, if the Court will permit, I would like to have from the original file certain original papers such as bills of particulars, admissions and interrogatories, because it is pursuant to these that I am going to commence the presentation of the testimony.

The Court: Would you like the original file?

Mr. Dobrin: Yes, your Honor.

The Court: I am giving you everything in the file except the defendant's trial brief.

Mr. Dobrin: I don't need that. And may I ask the clerk to remove the portions of it that I would

like to have removed? In the trial memorandum Mr. Gose has suggested that I might mention that—I refer to the situation that at the moment there is no material presented by the defendant as to the tonnage assessment for the period 1945. It is suggested in the trial memorandum that if that were not made available, that some disposition be made of that intervening period so that this litigation would be wholly without prejudice to the recovery of that further amount. And Mr. Gose and I are in accord that that may be so. In other words, I presume for a variety of reasons and mechanical difficulty of getting up those figures, we have the figures up to and including 1944, but not for the period of 1945 to date.

The Court: It is stipulated by both parties that the Court may consider the period up to and including December 31, 1944? [3]

Mr. Gose: Yes, that much is stipulated, but counsel is going somewhat beyond that.

The Court: Now, as to 1945, it is stipulated that the matter of dues, if any, due for 1945 may be eliminated from this action without prejudice?

Mr. Dobrin: That is agreeable to us, and I understand with Mr. Gose.

Mr. Gose: Yes, your Honor.

The Court: Just one moment further. Without requiring Mr. Gose to make any opening statement, and letting him feel that he is fully privileged to reserve any opening statement he would like to make until his case, I will tell him this, that if he feels that it is just as advantageous for the defend-

ant and for himself to make the opening statement now rather than at the beginning of the defendant's case, I think it would be a little easier for me to understand the situation.

Mr. Gose: Yes, your Honor, I would be very happy to make one now, and I think it might be useful if I did so.

The Court: I have read the trial memorandum of counsel for plaintiff.

Mr. Gose: Your Honor is aware of the general issue in the case and the matters shown by the pleadings. The plaintiff is relying on three theories, I gather from the complaint, as the basis of this action:

(1) A series of duly levied assessments, according to the plaintiff's allegation, by the board of directors of the plaintiff corporation.

(2) An alleged agreement to pay these dues.

(3) The third theory is that the defendant is liable because dues coincided, as I understand, with the reasonable benefits received by the defendant.

The defendant denies each of those three propositions in fact. It denies that there are duly levied assessment by the board of directors, although there were certain resolutions adopted by the board of directors touching on the question.

The defendant denies the existence of any agreement in fact.

The defendant denies the reasonable benefit theory as a matter of fact.

In addition, I may say the defendant denies the validity of any part of the transaction as a matter

of law. That is revealed by the various affirmative defenses that are set up.

I may say we deny the existence of any power on the part of the board of directors of the plaintiff corporation under the by-laws of that corporation to levy any assessment on an associate member such as the defendant is in this case. Conceding the existence of that power for the sake of argument only, the power to levy an assessment on an associate member as distinguished from a voting member, we deny that power has been exercised in a manner required by the by-laws.

Primarily, our position is that there has not been a proper procedure followed for the levying of the assessments; and, assuming that there is a power to assess associate members at all, the assessment [3b] must bear uniformly on all of the members of that class, on all associate members, and that in this case the type of assessment involved does not as a matter of fact, as everyone connected with the case knows, bear uniformly on the different associate members.

Mr. Dobrin: Now, your Honor, I don't like to sit——

The Court: (Interposing) Just a minute. Your keeping silent will not be an acquiescence.

Mr. Gose: I quite agree with that.

The Court: When he says everybody knows, that means that that is his contention, that everybody knows.

Mr. Gose: I am perfectly frank to say at this juncture that the primary defense, the one that

I have not yet alluded to and one that the plaintiff in his brief disposes of very summarily, is the defense of illegality of the entire transaction. I have cited cases on that proposition in the brief, the proposition being an assessment of that sort by an employers' association, under squarely decided cases, predicated or tied in to the amount of government contracts, is absolutely contrary to public policy and void where it has even a tendency to induce the bidder on a government contract to include that item as a part of his bid, either in addition to the amount bid or concealed somewhere in the amount bid. I think that point, your Honor, takes care of everything and is absolutely decisive of the case. But I don't by reason of that emphasis wish to minimize the validity of the other defenses at all.

There is another defense that, so far as we made any agreement, if there is one, which we don't [3c] believe as a matter of fact—that there has been a factor of economic compulsion throughout, as a study of the resolutions adverted to in the brief will indicate; and all the way down the line it has been the policy of this plaintiff to crack the whip, if I may use that figure of speech, over this defendant member and other members similarly situated. Or, to use another figure of speech, a member is between the devil and the deep blue sea. If it gets out, it is subject to one penalty; if it stays in, it is subject to another.

I think that about states the content of the defenses we will make. They are more fully elaborated

on in the brief that we filed. I wish to say this though, your Honor, that I think this case loses much of its complexity when the documents involved—and the case is ninety per cent documentary—are carefully examined in their chronological sequence. That, I think, is our duty, to lay the facts before your Honor chronologically.

If there is any other matter I have not touched upon your Honor thinks would help clarify our position in this case, I would be glad to so do. But I believe that about outlines our position.

The Court: All right. You may proceed. [3d]

Mr. Dobrin: I wish to offer in evidence at this time Plaintiff's request for admission under Rule 36 of the Federal Rules of Procedure No. 1 and the amended statement of defendant with respect thereto. Request for admission No. 1 reads as follows: "That Exhibit 1 hereto is a true copy of the constitution and by-laws of the plaintiff as amended and in effect since July, 1937." The defendant by its amended statement with reference to these requests for admissions admits the same.

The Court: Let me hear the begining of that statement.

(Reporter reads same.)

The Court: Is there any objection?

Mr. Gose: There is no objection.

The Court: Such is admitted.

Mr. Dobrin: I now offer in evidence as Exhibit 1 in this trial the Exhibit 1 referred to in the request for admission.

Mr. Gose: No objection.

The Court: Admitted.

(Booklet containing amended articles of incorporation and by-laws of Waterfront Employers Association of the Pacific Coast received in evidence and marked Plaintiff's Exhibit 1.)

Mr. Gose: Did I get lost? You made an offer before that.

Mr. Dobrin: I read the admission, and I am offering the exhibit.

Mr. Gose: The by-laws and constitution?

Mr. Dobrin: That is correct. I now offer in evidence [4] request for admission No. 2 and the admission thereof as follows: "That the defendant by its duly authorized officers signed the constitution and by-laws of the plaintiff on or about July, 1937."

The Court: Admitted.

Mr. Dobrin: I would like to have marked as Plaintiff's Exhibit 2 the amended articles of incorporation and by-laws of Waterfront Employers of Washington.

(Whereupon Amended Articles of Incorporation and By-laws of Waterfront Employers of Washington was marked Plaintiff's Exhibit 2 for identification.)

Mr. Dobrin: I offer in evidence request for admission—first, at this time I ask to have marked as Exhibit 3 for identification Exhibit B to the plaintiff's Bill of Particulars.

The Court: Plaintiff's Exhibit 3 for identification?

Mr. Dobrin: That is correct.

The Court: Being Exhibit B to what?

Mr. Dobrin: Plaintiff's Bill of Particulars.

(Document referred to marked Plaintiff's Exhibit 3 for identification.)

The Court: Is that offered?

Mr. Dobrin: No, just for identification. Counsel advises that he would have no objection to Exhibit 2 and I now offer it.

The Court: Exhibit 2 is admitted.

Mr. Gose: I wish to make a statement on it if your Honor please.

The Court: Just a minute. The admission is [5] vacated and you may make the statement.

Mr. Gose: I intended to indicate to counsel he might offer it. I have no objection to it being admitted but I think in the interest of clarification this statement ought to be made about it because many of the documents—probably I created a wrong impression. It is understood that this corporation Waterfront Employers Association of Washington is a separate corporation from plaintiff and not a subsidiary.

Mr. Dobrin: It is a separate corporation.

Mr. Gose: Is it claimed that it has any legal connection with the Waterfront Employers of the Pacific Coast?

Mr. Dobrin: Yes, certainly. It has many.

Mr. Gose: I think the by-laws and constitution will probably speak on that question.

The Court: Exhibit 2 is admitted.

(Document previously marked Plaintiff's Exhibit 2 for identification was received in evidence.)

The Court: Exhibit 2 is admitted without objection, but in making no objection the defendant is not conceding that the Plaintiff's interpretation of and inferences from the exhibit are to be accepted.

Mr. Dobrin: At this time there is no——

The Court: (Interposing): I say that is what Mr. Gose is anxious about, that he does not concede that what you later will have to say about it is necessarily correct.

Mr. Dobrin: In view of the present admission of Exhibit 2, I offer in evidence Plaintiff's request for [6] admission No. 26, which is admitted by the defendant as follows: "That on and after June 18, 1934, the defendant was and still is a member of the Waterfront Employers of Washington, a corporation."

Mr. Gose: That is admitted.

The Court: Admission 26 admitted in evidence.

Mr. Dobrin: I offer in evidence Request for Admission No. 4, which is admitted by the defendant as follows, "That Exhibit 2 hereto is a true copy of the form of monthly report of tonnage now and at all times mentioned in the Complaint herein provided by the plaintiff for the reporting of cargo tonnage subject to tonnage assessment as fixed by the Board of Directors of the plaintiff."

The Court: That was offered?

Mr. Dobrin: That was offered.

The Court: Admitted.

Mr. Dobrin: Mark this Plaintiff's Exhibit 4 for identification.

(Blank form for monthly report of tonnage marked Plaintiff's Exhibit No. 4 for identification.)

Mr. Dobrin: I now offer in evidence as Plaintiff's Exhibit 4, Exhibit 2 referred to in Admission 4.

Mr. Gose: No objection.

The Court: Exhibit 4 admitted.

(Plaintiff's Exhibit 4 for identification received in evidence.)

Mr. Dobrin: I offer in evidence Admission 5 admitted by the defendant reading as follows: "That Exhibit C to the Plaintiff's Bill of Particulars on file herein sets forth a true copy of the resolution duly [7] adopted by the Board of Directors of the Plaintiff on May 11, 1938.

Mr. Gose: That was admitted.

The Court: Admission 5 admitted in evidence.

Mr. Dobrin: Mark this Plaintiff's Exhibit 5 for identification.

(Resolution marked Exhibit C was marked Plaintiff's Exhibit No. 5 for identification.)

Mr. Dobrin: I offer in evidence as Plaintiff's Exhibit 5, Exhibit C to the plaintiff's Bill of Particulars referred to in Admission No. 5.

Mr. Gose: The minutes of May 11, 1938?

Mr. Dobrin: Yes, that is right.

Mr. Gose: No objection.

The Court: Exhibit 5 for identification admitted.

(Plaintiff's Exhibit 5 for identification received in evidence.)

Mr. Dobrin: I want to stop at this time to read that exhibit to the court. (Reading).

"Whereas the present rate of assessment of the Waterfront Employers Association of the Pacific Coast has been insufficient to meet expenses, and it being determined that additional income will have to be raised for this purpose, now

"Therefore be it resolved that effective June 1, 1938, the rate of assessment levied on all cargo loaded and/or discharged at ports on the Pacific Coast of the United States (except Alaska ports) be as follows:

" 'Off-shore and intercoastal cargo——'

"General cargo, 21½c per manifest ton; lumber, 21½c [8] per thousand feet; bulk cargo dry, 5/10 cents per ton (bulk fluid cargo exempt); trans-shipped cargo, one-half rate of foregoing (each vessel).

" 'Coastwise cargo—one-half off-shore rates paid in and out (when handled by crew and longshoremen), tonnage to be taxed is to be calculated proportionate to man-hours of longshoremen and crew actually handling cargo.'

"Be it further resolved that the notification to members of the increase in assessment rate as provided in the by-laws be accompanied by a letter explaining fully the necessity for increasing the assessment rate at this time."

Mr. Gose: May I inject a suggestion, counsel? You are passing for the time being the exhibit you have marked 3, which is the first resolution of the Board of Directors on the subject of this tonnage.

Mr. Dorbin: I had to do it because you didn't admit it.

Mr. Gose: Yes, I didn't admit it, and the reason I didn't admit it is because you have set up a part of the resolution. I will agree that is Paragraph 2 and reserve the right at a later time to put on the remaining five paragraphs of that resolution. You have set up only Paragraph 2.

Mr. Dorbin: Since that is the only problem that we have got on that, would you give me the minute book?

Mr. Gose: I have a copy of the entire thing prepared for just this purpose if you would like to substitute [9] it.

Mr. Dobrin: I would be very glad to.

The Court: We will give it another number.

Mr. Dobrin: If we can just mark that 3-something else. I would like to have these exhibits in in such a way that when we are all done they will just run chronologically.

The Court: All right. Mark it Exhibit—

Mr. Dobrin: 3-1?

The Court: No, 3-A.

(Document containing copy of resolution of July 31, 1937, referred to marked Plaintiff's Exhibit No. 3-A for identification.)

Mr. Dobrin: All right. Now, as I understand it, you have no objection to my offering Exhibit 3?

Mr. Gose: None at all, except that it is incomplete.

Mr. Dobrin: All right. I didn't want to offer it all, but it will be marked so that it is in its place, and you may offer it when you get there.

The Court: Exhibit 3 is offered.

Mr. Dobrin: First, I want to explain what Exhibit 3 is. I now offer in evidence Request for Admission No. 3 which was denied and which reads as follows, "That Exhibit B to Plaintiff's Bill of Particulars on file herein sets forth a true copy of a resolution duly adopted by the Board of Directors of the plaintiff on July 31, 1937," and which I now understand in open court is admitted to contain a part of the resolution adopted.

Mr. Gose: Paragraph numbered 2 of the resolution adopted on that date. [10]

Mr. Dobrin: Your Honor, I now offer in evidence Exhibit 3, which is Exhibit B to the plaintiff's Bill of Particulars referred to.

The Court: Well, was there any objection to your offer in evidence of the request for admission 3?

Mr. Gose: There was a denial of that document. I am perfectly glad to state that we do admit with respect to that request that the document therein referred to is a true copy of Paragraph 2 of the resolution adopted on July 31, 1937, by the Board of Directors.

Mr. Dobrin: And I offer it to that extent only.

The Court: You offer what?

Mr. Dobrin: The admission to that extent only.

The Court: Any objection?

Mr. Gose: No.

The Court: Admitted.

Mr. Dobrin: I now offer Plaintiff's Exhibit 3, being Exhibit B to the plaintiff's Bill of Particulars.

Mr. Gose: No objection.

The Court: Exhibit 3 admitted.

(Document previously marked Plaintiff's Exhibit 3 for identification was received in evidence.)

The Court: And Exhibit 3-A you have identified?

Mr. Dobrin: That is right. I now offer in evidence Plaintiff's Request for Admission No. 6, which is admitted by the defendant, reading as follows, "That Exhibit 3 hereto is a true copy of a letter of May 20, 1938, from the plaintiff which was received by the defendant on or about the date it bears."

The Court: It is offered? [11]

Mr. Dobrin: Yes.

Mr. Gose: No objection.

The Court: Admitted.

Mr. Dobrin: Will you mark this Plaintiff's Exhibit 6 for identification?

(Letter dated May 20, 1938, marked Plaintiff's Exhibit No. 6 for identification.)

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 6, being Exhibit 3 attached to and referred to

in Paragraph 6 of Plaintiff's Request for Admissions.

The Court: Letter of May 20, 1938?

Mr. Dobrin: That is correct.

Mr. Gose: No objection.

The Court: Exhibit 6 admitted.

(Document previously marked Plaintiff's Exhibit No. 6 for identification was received in evidence.

Mr. Dobrin: Now, I want to read this letter to your Honor. It is dated May 20, 1938, addressed to "Members: Effective June 1, 1938, the Board of Directors of the Waterfront Employers Association of the Pacific Coast adopted tonnage assessment rates as follows:

"Off-shore and intercoastal cargo:

"General Cargo, 2½¢ per manifest ton; lumber, 2½¢ per M board feet; bulk dry cargo, 5/10 cents per ton (bulk fluid exempt); trans-shipped cargo, one-half rate of foregoing (each vessel).

"Coastwise Cargo—one-half off-shore rates paid in and out (when handled by crew and longshoremen). Tonnage to be assessed is to be calculated proportionate to man-hours of longshoremen and crew actually handling [12] cargo. Very truly yours, A. Boyd, Secretary-Treasurer, Waterfront Employers Association of the Pacific Coast."

The Court: I think this is an appropriate time for the morning recess, and there will be a ten-minute recess.

(Recess.)

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission No. 7, which is admitted by the defendant, reading as follows: "That Exhibit D to the Plaintiff's Bill of Particulars on file herein sets forth a true copy of the resolution duly adopted by the Board of Directors of the Plaintiff on February 4, 1940," and before completing my offer, I will request Mr. Gose to admit that February 4 should be February 14 and amended accordingly.

Mr. Gose: That is correct. It may be received in evidence. No objection.

The Court: Admitted. So that there will be no misunderstanding, when you say "offer Request for the admission in evidence" are you including with it the admission?

Mr. Dobrin: Yes, I have stated each time "which is admitted" and when I get all done, I will offer the complete set of admissions so that they will all tie in together. But the reason I can't do it because he has put them all in one paragraph, and I can't say Paragraph 1 of his admission or something like that.

The Court: All right.

Mr. Dobrin: Will you mark this Exhibit 7 please.

(Resolution dated February 14, 1940, and marked Exhibit D was marked Plaintiff's Exhibit No. 7 for identification.) [13]

The Court: Exhibit 7 for identification is Exhibit D?

Mr. Dobrin: That is Exhibit D to plaintiff's

Bill of Particulars referred to in Plaintiff's Request for Admission No. 7.

The Court: All right.

Mr. Dobrin: And I offer it.

The Court: Exhibit 7 is offered. Any objection?

Mr. Gose: No objection.

The Court: Admitted.

(Document previously marked Plaintiff's Exhibit 7 for identification was received in evidence.)

Mr. Dobrin: I just wish to call the Court's attention to the fact that this Exhibit D, like the preceding resolution of the Board, sets forth the tonnage assessment, and in this particular one the resolution defines the method of translating a measurement ton into a weight ton.

I offer in evidence Request for Admission No. 8, which is admitted by the defendant, as follows, "That Exhibit E to the plaintiff's Bill of Particulars on file herein sets forth a true copy of the resolution duly adopted by the Board of Directors of the Plaintiff on May 8, 1940."

The Court: Admitted in evidence.

Mr. Dobrin: And for the purpose of the record, so that there can be no question about it, with respect to each of the requests for admissions which I have heretofore offered in evidence, I will also offer in evidence in connection with each the admissions. [14]

The Court: The same are admitted.

Mr. Dobrin: Mark this for identification, please.

(Resolution dated May 8, 1940, and design-

nated Exhibit E was marked Plaintiff's Exhibit 8 for identification.)

Mr. Dobrin: I offer in evidence as Plaintiff's Exhibit 8 for identification Exhibit E to plaintiff's Bill of Particulars referred to in Request for Admission No. 8 and the admission.

Mr. Gose: No objection.

The Court: Exhibit 8 admitted.

(Document previously marked Plaintiff's Exhibit 8 for identification was received in evidence.)

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission No. 9 and Defendant's admission thereof, the request reading as follows, "That Exhibit F to the plaintiff's Bill of Particulars on file herein sets forth a true copy of the resolution duly adopted by the board of directors of the plaintiff on May 8, 1940," and the admission reading, "Defendant admits the same."

The Court: Such is admitted in evidence.

Mr. Dobrin: Mark this Plaintiff's Exhibit 9.

(Resolution dated May 8, 1940, and designated Exhibit F was marked Plaintiff's Exhibit No. 9 for identification.)

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 9, being Exhibit F to the plaintiff's Bill of Particulars referred to in the Request for Admission No. 9 and the admission.

The Court: Exhibit 9 admitted. [15]

(Document previously marked Plaintiff's Exhibit 9 for identification was received in evidence.)

Mr. Dobrin: I want to call the Court's attention to this exhibit, and I will read it. (Reading):

"Be it resolved, that it be the recommendation of this Board of Directors that the final draft of the report on the collection of non-member assessments be left to the discretion of the committee appointed by the Chair, consisting of the managers, contracting stevedores who are ex-officio members of the Board and the Coast treasurer to develop the policy, for assessing and collecting non-member tonnage and that final action taken by the committee and consented to in writing by the majority of the member stevedores in the several ports in connection therewith be approved as the action of this Board.

"(The committee's report as finally adopted is attached and made a part of these minutes.)"

The committee's report attached thereto was the following memorandum agreement:

"May 9, 1940

"Memorandum of Agreement

"Pursuant to resolution of the Board of Directors of the Waterfront Employers Association of the Pacific Coast passed on May 8, 1940, which rescinds the resolution of February 15, 1940, on this subject:

"The stevedore members of the District Waterfront Employers Associations undertake to collect and remit to the Waterfront Employers Associations the uniform Coast tonnage tax on all cargo handled by them for non-member [16] steamship

companies. Each stevedore will include in his contract with non-members——

“The company (here put in name of party to contract) agrees to observe the labor agreements of the Waterfront Employers Association under which this contract is carried on by the stevedores, to which agreements the stevedore is a party; and further agrees to reimburse the stevedore for the port labor charge assessed against the cargo by the Waterfront Employers Association where the labor is performed. For your information, the current rates are:

“As authorized by the enclosed tariff of the Waterfront Employers Association.

“The Coast Association will keep the stevedore members advised through the district association of:

“1. The list of member steamship companies (for whom the stevedore accepts no responsibility for payment of tonnage tax);

“2. Current tonnage assessment rates;

“3. The method and forms of reporting tonnage and remitting assessments.

“The Coast Association will consider relieving member stevedores from payment of tonnage assessments for non-member lines upon written statement of the facts that they have tried but failed to collect under the foregoing contract provisions.

“The District Associations undertake to collect from non-member stevedores for their non-member steamship companies the man-hour charge of 4c in lieu of the membership tonnage, and remit to the Coast Association. [17]

“The foregoing is effective” And there follow places for signatures.

Now I offer in evidence Plaintiff's Request for Admission No. 13 and the admission thereof reading as follows: “That Exhibit 5 hereto is a true copy of the memorandum agreement signed by the defendant on or about May, 1940.”

The Court: Such is admitted in evidence.

Mr. Dobrin: Would your Honor have any objection before putting the number on there to omitting No. 10 for the moment so that I can have this exhibit marked No. 11?

The Court: Do you have something you wish to mark later?

Mr. Dobrin: Yes, later, your Honor.

The Court: I always prefer to have the exhibits numbered consecutively——

Mr. Dobrin: All right.

The Court: ——as identified. If you wish to have some other exhibit identified now, you may.

Mr. Dobrin: That is all right. I will let it go that way. That will be No. 10.

(Letter dated May 10, 1940 marked Plaintiff's Exhibit No. 10 for identification.)

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 10, being the exhibit 5 referred to in the Request for Admission No. 13, being the memorandum agreement signed by the defendant in this case.

The Court: Admitted.

(Document previously marked Plaintiff's Exhibit No. 10 for identification was received in evidence.) [18]

Mr. Dobrin: And I offer in evidence Plaintiff's Request for Admission No. 12 and the admission thereof, the request reading as follows, "That Exhibit 4 hereto is a true copy of the resolution duly adopted by the Board of Directors of the plaintiff on May 9, 1940."

The Court: Such is admitted in evidence.

Mr. Dobrin: Mark this as Plaintiff's Exhibit 11.

(Resolution effective May 1, 1940, and designated Exhibit 4 was marked as Plaintiff's Exhibit 11 for identification.)

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 11, being the exhibit 4 referred to in the previous Request for Admission and Admission.

The Court: Admitted.

(Document previously marked Plaintiff's Exhibit 11 for identification was received in evidence.)

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission 14 and defendant's Admission thereof, the request reading as follows: "That Exhibit G to the Plaintiff's Bill of Particulars on file herein sets forth a true copy of resolution duly adopted by the Board of Directors of the plaintiff on August 14, 1940."

The Court: Such is admitted in evidence.

Mr. Dobrin: This will be Plaintiff's Exhibit 12 for identification.

(Recommendation designated Exhibit G dated August 14, 1940, was marked as Plaintiff's Exhibit No. 12 for identification.)

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 12 for identification, being the exhibit G to the [19] plaintiff's Bill of Particulars referred to in the foregoing admission.

Mr. Gose: The resolution of August 14, 1940?

Mr. Dobrin: That is correct.

The Court: Exhibit 12 admitted.

(Document previously marked as Plaintiff's Exhibit 12 for identification was received in evidence.)

Mr. Dobrin: And I would like to call your Honor's attention to this particular exhibit. This is August 14, 1940, the Board adopting the recommendation,

"The great majority of contract stevedores have voluntarily accepted the program laid down by this board and agreed to be responsible for the collection of assessments on non-member tonnage handled by them. A few firms have thus far refused to accept this responsibility. In fairness to those who have agreed to take it, your committee recommends that formal action be taken by this board making acceptance of responsibility for non-member tonnage assessments a condition of membership for all contracting stevedore firms after a period allowing reasonable notice to those firms who have not voluntarily complied with this requirement."

The Court: Let me see that please (receiving same from Mr. Dobrin).

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission No. 15 and the Defendant's Admission thereof reading as follows, "That Ex-

hibit 6 hereto is a true copy of a letter of August 17, 1940, from the plaintiff which was received by the defendant on or about the [20] date it bears."

The Court: Admitted in evidence.

Mr. Dobrin: Mark this Plaintiff's Exhibit 13.

(Letter dated August 17, 1940, was marked Plaintiff's Exhibit No. 13 for identification.)

Mr. Dobrin: I offer in evidence as Plaintiff's Exhibit 13, being the Exhibit 6 referred to in the preceding admission——

Mr. Gose: Letter of August 17, 1940?

Mr. Dobrin: That is correct.

The Court: Exhibit 13 admitted.

(Document previously marked Plaintiff's Exhibit 13 for identification was received in evidence.)

Mr. Dobrin: I call your Honor's attention to that letter, which is addressed generally to the membership and advises the membership of the preceding resolution which your Honor just read. Mark this Plaintiff's Exhibit 14.

(Resolution dated March 12, 1941, and designated Exhibit H was marked Plaintiff's Exhibit No. 14 for identification.)

Mr. Dobrin: I am merely at this time requesting to have Exhibit H to Plaintiff's Bill of Particulars marked for identification.

The Court: Such has been marked.

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission No. 17 and Defendant's Admission thereof reading as follows——

The Court: Read that again, please.

(Mr. Dobrin's offer read by Reporter.) [21]

Mr. Dobrin: (Resuming) ——"That Exhibit I to the Plaintiff's Bill of Particulars on file herein sets forth a true copy of a resolution duly adopted by the board of directors of the plaintiff on April 16, 1942."

The Court: Such is admitted in evidence.

Mr. Dobrin: Mark this please.

(Resolution dated April 16, 1942, and designated Exhibit I was marked as Plaintiff's Exhibit No. 15 for identification.)

Mr. Dobrin: Off the record.

(Discussion off the record.)

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit No. 15, being resolution of April 16, 1942, and being the exhibit I to the plaintiff's Bill of Particulars referred to in Admission No. 17.

The Court: Exhibit 15 admitted.

(Document previously marked as Plaintiff's Exhibit 15 for identification was received in evidence.)

Mr. Dobrin: And I would like to call that one to your Honor's attention. This is a resolution of April 16, 1942, reading as follows, "Be it resolved that the treasurer of this Association be instructed to request all member companies and contracting stevedores, members of the several port associations, to regularly report at monthly intervals, all tonnage handled by them for the account of the Army and Navy, and that reporting of such tonnage be im-

mediately submitted of all tonnage in the past which has not been so reported to the Association and

“Be it further resolved that the treasurer be authorized [22] to outline to the member companies and contracting stevedores the manner of reporting Army and Navy tonnage to the Association.”

I offer in evidence Plaintiff's Request for Admission No. 18 and Defendant's Admission thereof, the request reading as follows, “That Exhibit 7 hereto is a true copy of letter of April 27, 1942, from the plaintiff which was received by the defendant on or about the date it bears.”

The Court: Such is admitted in evidence.

Mr. Dobrin: Mark this please.

(Letter dated April 27, 1942, was marked Plaintiff's Exhibit No. 16 for identification.)

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 16, being a letter of April 27, 1942, referred to in the preceding request for admissions and being Exhibit 7 attached thereto.

The Court: Exhibit 16 admitted.

(Document previously marked Plaintiff's Exhibit No. 16 for identification was received in evidence.)

Mr. Dobrin: And I would like to read that letter, your Honor, dated April 27, 1942, to Members.

“Re: Tonnage Assessments Army and Navy Cargoes:

“At at meeting of the board of directors of the Coast Association April 16, 1942, the treasurer of the Association was authorized to request all mem-

ber companies and contracting stevedores, members of the several port associations, or associate members of the Coast Association, to regularly report at monthly intervals all tonnage handled by them for account of the Army and Navy, also [23] that all Army and Navy tonnage handled in the past, be immediately reported to the Association, either at San Francisco, or to one of the other port associations in accordance with past practice in reporting tonnage.

“The treasurer was further authorized to outline to the member companies and contracting stevedores, the manner of reporting Army and Navy tonnage to the Association.

“In the past shipping members of the Association have reported all of their own cargo, and such non-member cargo handled where they acted as agents, regardless of whether the stevedoring was done by themselves, or by a contracting stevedore, and all contracting stevedores handling cargo for non-member lines were obligated, by resolution of the board, and by a jointly signed agreement by the contracting stevedores to report to the Association all such non-member tonnage, and also to protect the Associations' tonnage and assessments.

“It is our understanding, under the present or proposed Army and Navy contracts under which Army and Navy cargoes are handled, that provision is made therein for paying a portion of the Association's tonnage assessments to the contracting stevedore handling such cargo, but no provision is made for paying any portion of the tonnage

assessment to the steamship company who acts as terminal operator in connection with the same cargo under terminal contract with the Army and Navy.

“In light of the above, it is requested that all contracting stevedores, members of the several Port Associations, and steamship operators who handle their own [24] stevedoring operations, report monthly on the regular tonnage assessment forms, which have been in use for some years, all cargoes handled by them for the Army and the Navy, making such reportings on a separate report from any commercial cargoes, if any, which they handle.

“By making reportings in this manner it will enable the Association to keep track of the tonnage handled, and render tonnage assessments at the rates now in effect and established by the Coast board, although the rates set forth in the Army contract does not coincide with the Association's tonnage assessment rate.

“At the April 16 meeting of the board, a committee was authorized to make a study and recommend to the board the rate for tonnage assessments to be levied in connection with Army and Navy tonnage handled by steamship companies, or contracting stevedores, members or associated members of this Association. However, until such time as the board changes the assessment rate, the base rate of 21½¢ per ton still prevails, and none other can be recognized until a change in the rate is made by the board in conformity with the by-laws of the Association.

“Full circularization is being made to all mem-

bers and associate members in all ports, in order that there may be no misunderstanding, and all concerned are respectfully requested to promptly comply with the request outlined in this letter.

"Yours very truly, A. Boyd, Secretary-Treasurer, Waterfront Employers Association of the Pacific Coast."

I offer in evidence Plaintiff's Request for Admission [25] No. 19 and Defendant's Admission thereof, the request reading as follows: "That Exhibit J to the Plaintiff's Bill of Particulars on file herein sets forth a true copy of a resolution duly adopted by the Board of Directors of the Plaintiff on June 25, 1942."

The Court: Admitted in evidence.

Mr. Dobrin: Mark this, 17.

(Resolution dated June 25, 1942, and designated Exhibit J was marked Plaintiff's Exhibit No. 17 for identification.)

(Plaintiff's Exhibit No. 17 for identification was offered and admitted in evidence.)

Mr. Dobrin: I wish to read that one to your Honor. That is dated June 25, 1942. (Reading):

"Be it resolved that the treasurer be authorized to advise the contracting stevedores and steamship companies doing stevedoring both of which are members of either Coast Association or one of the Port Associations, that the contracting stevedores or the steamship companies doing stevedoring of cargo for either the Army, Navy or WSA is obligated to report the tonnage so handled and pay the

assessment to the Association in the same manner that non-member tonnage has been reported to the Association; and

“Be it further resolved, that the Board reaffirm the base rate of assessment as 21½¢ per ton now in force on commercial cargo.”

I offer in evidence Plaintiff's Request for Admission No. 20 and Defendant's Admission thereof, the request reading as follows, “That Exhibit 8 hereto is a [26] true copy of a letter of July 1, 1942.”

The Court: Exhibit 8?

Mr. Dobrin: 8, yes. “——is a true copy of a letter of July 1, 1942, from the Plaintiff, which was received by the defendant on or about the date it bears.”

The Court: Admitted in evidence.

Mr. Dobrin: Mark this 18.

(Letter dated July 1, 1942, was marked Plaintiff's Exhibit No. 18 for identification.)

Mr. Dobrin: I offer Plaintiff's Exhibit 18 for identification, being letter of July 1, 1942, and being Exhibit 8 referred to in the preceding Request for Admission No. 20.

The Court: 18 is admitted.

(Document previously marked Plaintiff's Exhibit No. 18 for identification was received in evidence.)

Mr. Dobrin: And I would like to read that to your Honor. It is dated July 1, 1942. (Reading):

“To Members: Re: Tonnage Assessments, Army, Navy and War Shipping Administration:

“On April 27 last, members were fully advised as to the procedure to be followed in reporting tonnage and collecting assessments dealing with Army and Navy cargoes and since that time contracts have been consummated with the War Shipping Administration, and the Board by resolution at its meeting of June 25, authorized the treasurer to advise all members as to method of reporting tonnage on any such cargoes and the payment of the assessment to the Association. The substance of the authorization was as [27] follows:

“That the contracting stevedores and steamship companies doing stevedoring, both of which are members of either the Coast Association or one of the Port Associations which handle cargoes for either the Army, Navy or the War Shipping Administration, is obligated to report the tonnage so handled and pay the assessment to the Waterfront Employers Association of the Pacific Coast or either of the Port Associations in the same manner that non-member tonnage has been reported to the Association in the past.

“The Board again reaffirmed its position that the base rate of assessment on all tonnage handled for either the Army, the Navy or the War Shipping Administration is $2\frac{1}{2}$ c per ton, the rate which is now in force on commercial cargoes.

“Full circularization is being made of this material to all members and associate members in all ports in order that there may be no misunderstanding, and all concerned are urgently requested to promptly comply with the procedure outlined in

this letter and should any points not be clear to communicate with this office.

“Very truly yours, A. Boyd, Secretary-treasurer, Waterfront Employers Association of the Pacific Coast.”

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission No. 21 and Defendant's Admission thereof, the request reading as follows, “That the copy of letter of October 27, 1942, to the defendant signed by [28] K. J. Middleton on behalf of the plaintiff and being Exhibit N, pages 1 and 2, to the plaintiff's Bill of Particulars on file herein, is a true copy of the original received by the defendant on or about the date it bears.”

The Court: Admitted in evidence.

Mr. Dobrin: Mark this, please.

(Letter dated October 27, 1942, and designated Exhibit N was marked Plaintiff's Exhibit No. 19 for identification.)

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 19, letter of October 27, 1942, and likewise being the Exhibit N to the plaintiff's Bill of Particulars referred to in the Request for Admission No. 21.

The Court: Admitted.

(Document previously marked as Plaintiff's Exhibit No. 19 for identification was received in evidence.)

Mr. Dobrin: I would like to read it to your Honor, and I may say——

The Court: (Interposing) I will say, counsel,

that I will gain a great deal of time if you will hand the exhibit to me.

Mr. Dobrin: I will be very happy to. I am only trying to be helpful by the method I was following.

(Court reads Plaintiff's Ex. 19.)

The Court: All right. You may proceed.

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission No. 22 and Defendant's Admission thereof, the request reading as follows, "That copy of [29] letter of November 2, 1942, from the defendant signed by F. E. Settersten, addressed to K. J. Middleton, Waterfront Employers of Washington, being Exhibit O to the plaintiff's Bill of Particulars on file herein, is a true copy of the original delivered by the defendant to the plaintiff on or about the date it bears."

The Court: Admitted in evidence.

Mr. Dobrin: Mark this please.

(Letter dated November 2, 1942, and designated Exhibit O was marked Plaintiff's Exhibit No. 20 for identification.)

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 20, being the letter referred to in the preceding Request for Admission No. 22 dated November 2, 1942, and being Exhibit O to the plaintiff's Bill of Particulars.

The Court: Admitted.

(Document previously marked Plaintiff's Exhibit No. 20 for identification was received in evidence.)

(Court reads same.)

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission No. 23 and defendant's Admission thereof, the request reading as follows, "That Exhibit K to the Plaintiff's Bill of Particulars on file herein sets forth a true copy of a resolution duly adopted by the Board of Directors of the plaintiff on November 11, 1942.

The Court: Admitted.

Mr. Dobrin: Mark this please.

(Resolution dated November 11, 1942, and designated Exhibit K was marked Plaintiff's Exhibit No. 21 for identification.) [30]

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 21 for identification, being the Exhibit K to plaintiff's Bill of Particulars referred to in Plaintiff's Request for Admission No. 23.

The Court: Admitted.

(Document previously marked Plaintiff's Exhibit No. 21 for identification was received in evidence.)

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission No. 24 and defendant's admission thereof, the request reading as follows: "That Exhibit L to the plaintiff's Bill of Particulars on file herein sets forth a true copy of a resolution duly adopted by the Board of Directors on November 12, 1942."

The Court: Admitted.

Mr. Dobrin: Mark this please.

(Resolution dated November 12, 1942, designated Exhibit L was marked Plaintiff's Exhibit No. 22 for identification.)

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 22 for identification, being the Exhibit L to the plaintiff's Bill of Particulars referred to in the preceding request for admission No. 24.

The Court: Exhibit 22 admitted.

(Document previously marked Plaintiff's Exhibit 22 for identification was received in evidence.)

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission No. 25 and Defendant's Admission thereof, the Request for Admission reading as follows, "That the copy of the special committee report set forth on Exhibit L—" which I may say parenthetically is now [31] Exhibit 22 in this case—"Exhibit L to the Plaintiff's Bill of Particulars on file herein is a true copy of the Special Committee report attached to the resolution adopted by the Board of Directors of the plaintiff on November 12, 1942 as set forth on Exhibit L to said Bill of Particulars."

The Court: Admitted in evidence.

Mr. Dobrin: And may it be agreed that that admission is amended by the statement that Exhibit L is Exhibit 22?

Mr. Gose: Yes, Exhibit 22 now includes both the resolution of the Board of Directors and the committee report adopted by that resolution.

Mr. Dobrin: That is right. I offer in evidence Plaintiff's Request for Admission No. 27 and the defendant's Admission thereof, the request reading as follows: "That Exhibit 9 hereto is a true copy

of the resolution duly adopted by the Board of Directors of the plaintiff on February 25, 1943."

The Court: Admitted in evidence.

Mr. Dobrin: Mark this please.

(Resolution dated February 24, 1943, and designated Exhibit 9 was marked Plaintiff's Exhibit No. 23 for identification.)

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 23 for identification, being the Exhibit 9 attached to plaintiff's Request for Admission No. 27, or being the resolution adopted by the Board of the plaintiff on February 24, 1943.

The Court: Exhibit 23 admitted. [32]

(Document previously marked Plaintiff's Exhibit No. 23 for identification was received in evidence.)

Mr. Dobrin: Would you have any objection, Mr. Gose; for me to write in ink on Exhibit 23 as admitted the date February 25, 1943?

Mr. Gose: You mean across the top by way of caption?

Mr. Dobrin: Yes.

Mr. Gose: I think that would be helpful.

The Court: The trial of this case will be recessed until 2:00 o'clock.

(Whereupon, a recess herein was had until 2:00 p. m.)

The Court: You may proceed.

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission No. 16, which reads as follows, "That Exhibit H to the Plaintiff's Bill of Particu-

lars on file herein sets forth a true copy of the resolution duly adopted by the Board of Directors of the plaintiff on March 12, 1942." May I make this statement in reference to Exhibit H? Exhibit H has now been marked for identification in this case as Plaintiff's Exhibit 14.

The Court: Plaintiff's Exhibit 14 for identification?

Mr. Dobrin: Yes. And I also offer in evidence, and will ask Mr. Gose to agree, if he will, that the defendant now admits that request.

Mr. Gose: That is correct. Defendant does now [33] admit that request.

The Court: The same is admitted.

Mr. Dobrin: I now offer in evidence Exhibit 14.

The Court: The same is admitted.

(Document previously marked Plaintiff's Exhibit No. 14 for identification was received in evidence.)

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission No. 28 (A), which reads as follows, "That a meeting of the Board of Directors of the Waterfront Employers of Washington was duly held on March 10, 1943, at which said meeting F. E. Settersten and M. E. Hay, representing the defendant, were present, together with a committee from San Francisco consisting of W. J. Bush, Thomas James, J. A. Lunny and W. T. Sexton, representing the plaintiff and appointed pursuant to the resolution of the Board of Directors of the plaintiff as set forth on Exhibit 9 hereto." The

Exhibit 9 referred to is Plaintiff's Exhibit 23 now admitted in this case.

And I offer in evidence the Defendant's Admission to that request, and, Mr. Gose, will that be amended by the statement I just made?

Mr. Gose: Yes.

Mr. Dobrin: The admission reads as follows, "Defendant admits the truth of the facts stated in Item 28(a), except that defendant denies any implication contained therein that the persons named therein were the only persons present at said meeting."

The Court: Such is admitted.

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission No. 28 (B), reading as follows, [34] "That at said meeting of the Board of Trustees of the Waterfront Employers of Washington held on March 10, 1943, M. E. Hay on behalf of the defendant, as his client and principals, stated as follows: 'That his principals had met with the committee from San Francisco and had ironed out with them certain matters which had been misunderstood or in dispute and that his client felt that, having accepted benefits of the Coast Association, there was a moral obligation to pay for such benefits, that the matter of legal liability was waived, and that his client would pay back assessments of 2½¢ a ton, and future assessments made by the Coast Association, the method of payment to be arrived at with the San Francisco committee following adjournment of this meeting'."

The defendant's amended statement in reference

thereto, Paragraph 3, "Defendant admits, with respect to Item 28 (b) that the statements therein attributed to 'M. E.' are a paraphrase of a part of what was said at said meeting by E. M. Hay, but defendant denies any possible implication that the statement as set forth expresses the verbatim language used by E. M. Hay or that the said statement constitutes all that was said by Mr. Hay at the meeting with respect to the subject matter contained in the quoted statement."

I offer that.

The Court: Such is admitted.

Mr. Dobrin: Mark this please.

(Minutes of meeting of Board of Trustees, Waterfront Employers of Washington, March 10, 1943, was marked Plaintiff's Exhibit No. 24 for identification.) [35]

Mr. Dobrin: Do you wish to inspect that?

Mr. Gose: No. No objection to that.

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 24.

The Court: What is it?

Mr. Dobrin: Now, that is the minutes of a meeting of the Board of Trustees of March 10, 1943, to which the request for admissions 28 (A) and 28 (B) pertain.

The Court: Was it an exhibit to 28 (B)?

Mr. Dobrin: No, it was a separate document. It is the minutes of that meeting which is referred to in 28(A) and 28(B). I am offering it.

The Court: Exhibit 24 admitted.

(Document previously marked Plaintiff's Ex-

hibit 24 for identification was received in evidence.)

Mr. Dobrin: And I would like to have your Honor take the time to read that exhibit.

The Court: All right.

(The Court reads Plaintiff's Exhibit No. 24.)

Mr. Dobrin: Mark this please.

(Letter dated March 11, 1943 was marked Plaintiff's Exhibit No. 25 for identification.)

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 25.

Mr. Gose: No objection.

The Court: Admitted.

(Document previously marked Plaintiff's Exhibit No. 25 for identification was received in evidence.)

Mr. Dobrin: I offer in evidence in connection [36] with Exhibit 25 Plaintiff's Request for Admission 29, and Defendant's Admission thereof, the request reading as follows, "That the copy of the letter of March 11, 1943 from the defendant, signed by M. E. Hay"—that should be E. M. Hay—"Secretary, addressed to the Committee, Waterfront Employers Association of the Pacific Coast, set forth on Exhibit P (page 1) to the Plaintiff's Bill of Particulars on file herein, is a true copy of the original delivered by the defendant to the plaintiff on or about the date it bears." And I would like to modify both the request and the admission by changing that portion of it that refers to the letter

as Exhibit P (page 1) to include also the same exhibit as No. 25 in this trial.

Mr. Gose: I am a little lost there, counsel.

Mr. Dobrin: The letter is referred to as Exhibit P (page 1) to the Plaintiff's Bill of Particulars. It is now also Exhibit 25.

Mr. Gose: If that is the same letter that you just now introduced in evidence as Plaintiff's Exhibit 25, that is agreed to.

The Court: Admitted in evidence.

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission No. 30 and the Defendant's Admission thereof, the request reading as follows, "That subsequent to March 11, 1943 the defendant paid to the plaintiff the amounts asserted by the defendant to be the balance due on the tonnage assessment owing to the plaintiff from the defendant for the period ending December 31, 1942."

The Court: Admitted in evidence. [37]

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission No. 31 and Defendant's Admission thereof, reading as follows, "That since the period ending March 31, 1942 the defendant has failed to report to the plaintiff on said form, Exhibit 2 hereto, all of the cargo tonnage handled by the defendant and claimed by the plaintiff to be subject to the tonnage assessment and has not paid the tonnage alleged to be due thereon."

The Court: Admitted in evidence.

Mr. Dobrin: With counsel's permission, I would like an agreement that the Exhibit 2 referred to

in Request for Admission No. 31 is Exhibit 4 introduced in evidence.

Mr. Gose: That is correct.

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission 32(A) and Defendant's Admission thereof, reading as follows, "That on or about February 1944 and prior to the institution of this action the defendant made a tender to the plaintiff of a check in the amount of \$17,364.51, which check had endorsed thereon 'In full payment of 1943 tonnage assessments'."

The Court: Admitted in evidence.

Mr. Dobrin: I offer in evidence Plaintiff's Request for Admission 32 (B) and Defendant's Admission thereof, the request reading as follows, "That said tender and check were not accepted by the plaintiff."

The Court: Admitted in evidence.

Mr. Dobrin: Off the record.

(Request for Admission under Rule 36 of the Federal Rules of Civil [38] Procedure marked Plaintiff's Exhibit No. 26 for identification.)

(Amended Statement of Defendant with Respect to Plaintiff's Request for Admission under Rule 36 marked Plaintiff's Exhibit No. 27 for identification.)

Mr. Dobrin: I offer in evidence the original of Plaintiff's Request for Admission Under Rule 36 of the Federal Rules of Civil Procedure, omitting therefrom only those portions thereof which have

been abstracted from it and otherwise marked as exhibits in the case.

The Court: I don't quite understand what you mean.

Mr. Dobrin: You see what we have done——

The Court: (Interposing) Let me look at it.

Mr. Dobrin: We have taken all the exhibits off and had them marked and offered them in evidence. I think I will withdraw that offer. I am afraid it will be confusing. There are some things that do not deal with——

The Court: They have been marked:

Mr. Gose: That was 26 and 27?

Mr. Dobrin: Yes.

The Court: That is, the Request for Admission is 26 and Exhibit 27 is the Amended Statement of Defendant With Respect to Plaintiff's Request for Admissions Under Rule 36?

Mr. Dobrin: I am not going to offer it. I am afraid it will add to confusion. I offer in evidence Interrogatory 15 submitted by the plaintiff to the defendant and defendant's Answer thereto, the interrogatory reading as follows, "At what rate of tonnage assessment [39] was the sum of \$17,364.51 tendered to the plaintiff prior to the institution of this action calculated?"

And the Answer, "11¼c per ton."

The Court: Such are admitted in evidence.

Mr. Dobrin: I offer in evidence Interrogatory No. 1 and the first and second paragraphs of the answer thereto, Interrogatory 1 reading as follows, "For the period March 1, 1942 to the date of your

answer or for the period next preceding the date of your answer for which information is available, furnish all the information as called for on Exhibit 1 attached hereto, omitting the certification and following the instructions contained thereon, disclosing all cargo which the defendant has loaded to or discharged from vessels during said period." And with counsel's permission I would like to make this statement as an accurate statement, that the Exhibit 1 referred to in the interrogatory is Exhibit 4 in this case.

Mr. Gose: The tonnage report form?

Mr. Dobrin: That is right. And this portion of the answer thereto is being offered, "There are furnished herewith, marked as Exhibits 1 to 18 inclusive, monthly reports of tonnage on forms provided by plaintiff showing all cargo handled by defendant for the War Shipping Administration for the period from March 1, 1942 to January 31, 1945."

The Court: That is all offered?

Mr. Dobrin: Yes.

The Court: Without objection, it is admitted in evidence. [40]

Mr. Gose: There is more to the answer to that interrogatory.

Mr. Dobrin: Just give me time. It will all go in. Mark this please.

(Eighteen monthly tonnage reports designated 1 to 18, inclusive, were marked Plaintiff's Exhibit No. 28 for identification.)

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 28 for identification, which are the exhibits

referred to in the answer to the interrogatory previously read as Exhibits 1 to 18.

The Court: Admitted.

(Documents previously marked for identification as Plaintiff's Exhibit No. 28 were received in evidence.)

Mr. Dobrin: I ask your Honor to inspect that exhibit only for the purpose of seeing the dates that it covers, and I call your Honor's particular attention to the last one, showing report for May 1944.

The Court: All right.

Mr. Dobrin: I now offer in evidence the third paragraph of the answer to Interrogatory No. 1, reading as follows, "The defendant has been advised by the Judge Advocate General of the United States Army that it may furnish to the plaintiff information as to the amount of cargo handled by defendant for the United States Army but that such information should be given only upon a calendar year basis and without indicating the particular amount carried by any ship. A copy of the letter from the Judge Advocate General on this subject is hereto attached, [41] marked Exhibit A. In accordance with the permission therein contained, the defendant states that from March 1, 1942 to December 31, 1944, it has provided stevedoring service to vessels carrying cargo for the United States Army and that the volume of the cargo handled by the defendant is as follows: From March 1, 1942 to December 31, 1942—714,817 tons: From January 1, 1943 to De-

ember 31, 1943—1,389,161 tons: From January 1, 1944 to December 31, 1944—1,589,681 tons.

“No other cargo than hereinbefore mentioned has been handled by the defendant during the periods above mentioned.”

Mr. Dobrin: I offer that.

The Court: Admitted.

Mr. Dobrin: Off the record.

(Discussion off the record.)

Mr. Dobrin: Mark this please.

(Letter dated January 18, 1945 marked Plaintiff's Exhibit No. 29 for identification.)

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 29 for identification. Your your Honor's information, this is the Exhibit A referred to in the last answer to Interrogatory 1, which was admitted in evidence.

The Court: That is in Paragraph 3?

Mr. Dobrin: That is right, your Honor.

The Court: Exhibit 29 admitted.

(Document previously marked Plaintiff's Exhibit No. 29 for identification was received in evidence.)

Mr. Dobrin: I offer in evidence Plaintiff's Interrogatory No. 2 to the defendant reading as follows: “In connection [42] with your answer to Interrogatory No. 1, state or indicate in the information supplied in respect thereto the cargo tonnage listed therein which you have heretofore reported to the plaintiff, the date of such report, the amount

of tonnage assessment paid on each report and the date of such payment."

And the first paragraph of the answer thereto as follows, "All of the cargo handled by the defendant for the account of the War Shipping Administration, as stated in the answer to Interrogatory No. 1, has been heretofore reported to the plaintiff, and the so-called tonnage assessment of 2½¢ per ton has been paid thereon by the defendant to the plaintiff. There is attached hereto, marked Exhibit B, a schedule showing the date of all such reports and the dates and amounts of all payments made thereon."

The Court: Admitted.

Mr. Dobrin: Mark this.

(Document designated Exhibit B, Tonnage Reported to Waterfront Employers of Washington on War Shipping Administration ships, was marked Plaintiff's Exhibit No. 30 for identification.)

Mr. Dobrin: I offer Plaintiff's Exhibit 30 for identification, which is the Exhibit B referred to in the paragraph of the answer to Interrogatory No. 2 which has just been admitted in evidence.

The Court: Admitted.

(Document previously marked Plaintiff's Exhibit No. 30 for identification was received in evidence.)

Mr. Dobrin: I would like to have your Honor examine [43] it if you will please.

(Court examines same.)

Mr. Dobrin: And I call your Honor's attention particularly to the dates of payment on that tonnage as you will see in the second from the last column.

The Court: All right.

Mr. Dobrin: I now offer in evidence the second paragraph of answer to Interrogatory No. 2——

The Court: Admitted.

Mr. Dobrin: ——reading as follows, “Defendant has also reported to and paid the plaintiff the so-called tonnage assessment of $2\frac{1}{2}c$ per ton on all cargo handled by it for the United States Army up to December 31, 1942, as shown in the answer to Interrogatory No. 1 above. There is hereto attached, marked Exhibit C, a schedule showing the dates of payment and the amounts paid at $2\frac{1}{2}c$ per ton on account of such Army cargo for said period from March 1, 1942 to December 31, 1942.

The Court: If my admission was premature, counsel for defendant will understand such counsel may object. I assume there is none.

Mr. Gose: No objection.

The Court: The admission stands.

Mr. Dobrin: Mark this please.

(Document designated Exhibit C, Tonnage Reported on United States Army Cargo from March 1, 1942 to December 31, 1942, inclusive, marked Plaintiff's Exhibit 31 for identification.)

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 31, being the Exhibit C referred to in that portion [44] of the answer to Interrogatory No. 2 last admitted.